United States Court of Appeals

for the Second Circuit

APPENDIX

UNITED STATES COURT OF APPEALS
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SECOND CIRCUIT

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75-6080

United States Court of Appeals

For the Second Circuit

Docket No. 75-6080

B P/S

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellee,

against

BERNARD JAY COVEN,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VOLUME 1

JOINT APPENDIX

Pages 1a — 341a

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RELEVANT DOCKET ENTRIES

1 5-73	Filed Complaint. Issued Summons. (of summons & complaint.)
1 5-73	Filed Order permitting the plff to make service purs to Rule 4c of parties named who are not parties to this action. Clerk.
26,73	Filed Summons and affidavit of Service by Carmine L. Asselta of Summons & Complaint on defe.
.19-73	Filed ANSWER by deft. Bernard Jay Coven, tocomplaint.
n.17,74	Filed Consent Judgement of Deft. Robert B. Levine is permanently enjoined from dealing in the securities of Dennison Personnel, Inc., or any other security, ect. except as provided in this Order. Pierce, J. Judgment Entered - Clerk Entered Jan. Ent.1/20
an 2-74	Hearing & Trial (non-jury) for permanent injunction begun before Pierce, J
n 3-74	Trial cont'd
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eb 6/74	Filed Deft. Republic National Bank of N.Y. Proposed findings of fact & proposed conclusions of law.
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an 30-74	Trial continued
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ar. 8-74	Filed deft's (Coven) notice of change in deposition.
arch 4-74	Trial cont'd
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r 7-74 T	Trial Cont'd & concluded
7 3-75	Filed Opinion # 42724
8-19-75	Filed Opinion #42976. Motion to reconsider is denied. Pierce J. (mailed notice)
08-20-75	Filed Final Judgment. Ordered that Defts. Joseph Roga Jr., Christian Paine & Co., Inc. Carlton Cambridge & Co., Inc., Ross W. Pascall, Louis Levine, Bernard A. Colloff Joseph Corvino & Harold Weinberg, their officers etc. are permanently enjoined from as indicated; Etc. & that the commissions complaint dtd. 7-5-75 is dismisse as to the deft. The Republic National Bank of New York is in all respects dismi with prejudice.; Further Ordered that jurisdiction is hereby reserved over all defts., except the Republic National Bank of New York, to make such other & furth orders & to issue such directions as the Court shall, on application or upon it own motion, deemed necessary or appropriate for the accomplishment of the putpose of this order. Pierce J. Judgment Entered Clerk 8-20-75 Entered 8-20-7 (mailed notice)

COMPLAINT

2a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JUDGE PIERCE

SECURITIES AND EXCHANGE COMMISSION :

Plaintiff, : 73 Civil Action
File No. 2944

-against- :

JOSEPH REGA, JR. :
CHRISTIAN-PAINE & CO. INC. COMPLAINT
CARLTON-CAMBRIGE & CO., INC. :
BERNARD JAY COVEN
ROBERT B. LEVIN :
THE REPUBLIC NATIONAL BANK OF NEW YORK
ROSS W. PASCALL :
LOUIS LEVINE
BERNARD A. COLOFF :
JOSEPH CORVINO
HAROLD WEINBERG :

Defendants. :

FILED
U.S. District Court
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S.D. N.Y.

Plaintiff Securities and Exchange Commission ("Commission") for its complaint alleges:

1 Defendants Joseph Rega, Jr. ("Rega"), Christian-Paine & Co., Inc. ("Christian-Paine"), Carlton-Cambrige & Co., Inc. ("Carlton-Cambrige"), Bernard Jay Coven ("Coven"), Robert B. Levin ("Levin"), The Republic National Bank of New York ("Republic Bank"), Ross W. Pascall ("Pascall"), Louis Levine ("Levine"), Bernard A. Coloff ("Coloff"), Joseph Corvino ("Corvino") and Harold Weinberg ("Weinberg") have engaged, are engaged and are about to engage in acts, practices and courses of conduct which constitute and will constitute violations of Sections 5(b) and 17(a) of the Securities Act of 1933 ("Securities Act"), as amended, 15 U.S.C. 77e(b) and 77q(a) and Sections 10(b) and 15(c)(2) of the Securities Exchange Act of 1934 ("Exchange Act"), as amended, 15 U.S.C. 78j(b) and 78o(c)(2), and Rules 17 C.F.R. 240.10b-5, 10b-6, 10b-9 and 15c2-4 thereunder.

2. The Commission, pursuant to Section 20(b) of the Securities Act, 15 U.S.C. 77t(b) and Section 21(e) of the Exchange Act, 15 U.S.C. 78u(e), brings this action to enjoin such acts and practices.

3. This Court has jurisdiction of this action pursuant to Section 22(a) of the Securities Act, 15 U.S.C. 77v(a) and Section 27 of the Exchange Act, 15 U.S.C. 78aa.

4. Pursuant to authority conferred upon the Commission by Sections 10(b), 15(c)(2) and 23(a) of the Exchange Act, 15 U.S.C. 78j(b), 78o(c)(2) and 78w(a), the Commission has promulgated Rules 17 C.F.R. 240.10b-5, 10b-6, 10b-9 and 15c2-4 which are now and at all times relevant herein were in effect.

THE DEFENDANTS

5. Defendant Rega resides at 12 Allen Drive, Fairfield, New Jersey. From March 1972 through December, 1972, Rega was President and chief executive officer of Carlton-Cambrige. At various times during that period he was also president and chief executive officer of Christian-Paine, a position he presently maintains.

6. Defendant Christian-Paine is a New York corporation having its principal place of business at 232 Boulevard, Hasbrouck Heights, New Jersey. Christian-Paine, formerly Continental Planning has been registered with the Commission as a broker-dealer pursuant to Section 15(a) of the Exchange Act, 15 U.S.C. 78o(a) since June 24, 1970.

7. Defendant Carlton-Cambrige is a New Jersey corporation having its principal place of business at 81 Home Place, Lodi, New Jersey. Carlton-Cambrige has been registered with the Commission as a broker-dealer pursuant to Section 15(a) of the Exchange Act,

15 U.S.C. 78o(a) since July 27, 1968. Carlton-Cambrige was underwriter of the public offering of the common stock of De nison Personnel, Inc. ("Dennison Personnel") pursuant to a registration statement filed with the Commission which became effective on April 26, 1972.

8. On or about December 8, 1972 Carlton-Cambrige, was reorganized by defendant Rega. Rega acquired a separate broker-dealer, Continental Planning, renamed it Christian-Paine and transferred all the assets, liabilities, accounts, employees, locations and business of Carlton-Cambrige to Christian-Paine. Carlton-Cambrige was left without any employees or active accounts and its books and records were transferred to a storage area. The president of Carlton-Cambrige is employed as a cashier at Christian-Paine. Christian-Paine is in all respects the successor to Carlton-Cambrige.

9. Defendant Coven is an attorney licensed to practice law in the State of New York. At all times relevant herein Coven served as counsel to the issuer with respect to the above-described public offering of Dennison Personnel stock. He asserted his Fifth Amendment privilege and the attorney-client privilege in refusing to testify or produce documents pursuant to a Commission subpoena issued in the course of the investigation of this matter. His principal place of business is in New York City, New York.

10. Defendant Levin resides at 200 South Middle Neck Road, Great Neck, New York. He is an attorney licensed to practice law in the State of New York. At all times relevant herein Levin served as counsel for the underwriters with respect to the public offering of the stock of Dennison Personnel.

11. Defendant Republic Bank is located at 452 Fifth Avenue, New York, New York. Pursuant to the terms of the public offering of Dennison which are fully described in paragraph 22 below, the Republic Bank was to maintain an escrow account to receive subscribers' funds in connection with the public offering of the stock of Dennison Personnel.

12. Defendant Pascall resides at 380 Mountain Road, Suite 2009, Union City, New Jersey. At all times relevant herein he was the resident manager of the West Caldwell office of Carlton-Cambrige. During the course of the Commission's investigation of this matter, he asserted his privilege against self-incrimination and declined to testify as to certain transactions executed for his own account or the accounts of his customers.

13. Defendant Levine resides at 693 Kent Avenue, Teaneck, New Jersey. At all times relevant herein he was employed by Carlton-Cambrige in the Fort Lee office, either as manager or registered representative. During the course of the Commission's investigation of this matter, he asserted his privilege against self-incrimination and declined to testify as to certain transactions executed for the accounts of his customers.

14. Defendant Coloff resides at 124 Johnson Avenue, Teaneck, New Jersey. At all times relevant herein he was employed by Carlton-Cambrige as a registered representative. During the course of the Commission's investigation of this matter, he asserted his privilege against self-incrimination and declined to testify as to certain transactions executed for the accounts of his customers.

15. Defendant Corvino resides at 381 Broad Street, Newark, New Jersey. At all times relevant herein, he was employed by Carlton-Cambrige as a registered representative. During the course of the Commission's investigation of this matter, he asserted his privilege against self-incrimination and declined to testify as to certain transactions executed for the accounts of his customers.

16. Defendant Weinberg resides at 6 East Liberty Street, Bloomfield, New Jersey. At all times relevant herein he was employed by Carlton-Cambrige as a registered representative. During the course of the Commission's investigation of this matter, he asserted his privilege against self-incrimination and declined to testify as to certain transactions executed for the accounts of his customers.

DENNISON PERSONNEL

17. Dennison Personnel is a Delaware corporation having its principal place of business at 32 Broadway, New York, New York. Gerald Patrick Bowes ("Bowes") is, and at all times relevant herein was, president and chief operating officer of Dennison Personnel. The company at all times relevant herein was engaged in securing employment for skilled and executive personnel and placing office and clerical personnel with investment banking firms, securities brokerage houses, banks and other similar companies and institutions.

18. On April 26, 1972 a registration statement for the public offering of 6,000,000 shares of the common stock of Dennison Personnel at $.10 per share was declared effective by the Commission. The terms of the offering, as published in the registration statement and prospectus, were 3,000,000 shares on an "all or none" basis and the other 3,000,000 shares on a "best efforts" basis. That is, the underwriter was obligated to return all funds received in the offering to the public if a minimum of at least 3,000,000 shares were not sold. If the minimum was sold, the underwriter was then obligated to use its "best efforts" to sell the remaining 3,000,000 shares for the duration of the selling period.

19. On or about June 6, 1972, Dennison Personnel retained the services of defendant Coven, an experienced practitioner in the securities field to effect a public offering of the stock of the company.

20. Defendant Levin was listed in the registration statement and the prospectus as counsel for the underwriters.

21. Stevens Jackson Seggos, Inc. ("Stevens Jackson") was a New Jersey broker-dealer whose principal was E.P. Seggos ("Seggos"). Coven and Seggos had an agreement whereby for a certain "commission" Coven used the name of Stevens Jackson on the cover of Dennison Personnel prospectuses although Stevens Jackson would have no selling responsibilities and, in fact, sold no shares.

22. As a safeguard for the protection of the public as required by the federal securities laws, an escrow account was opened at the Republic Bank. The bank agreed to act as escrow agent, to receive subscribers' funds and hold them for safekeeping unless or until the minimum 3,000,000 shares were sold which, in the contemplation of all parties concerned, was to be evidenced by the fact that $300,000 had been collected in the escrow account. If $300,000 was not collected, the money was to be returned to the public investors who had subscribed. The bank accepted this responsibility of trust of its own volition in return for its customary fee. The bank received a prospectus and knew of the representations made to the public regarding the maintenance of the aforesaid escrow account.

23. The Dennison Personnel registration statement and prospectus indicated that the co-underwriters for the offering were Carlton-Cambrige and Stevens Jackson. This representation was made to the public despite the fact that defendants Rega, Coven and Levin knew or should have known that Stevens Jackson had a limited sales capacity, had no intention of participating in the distribution and appeared in name only as part of the agreement between Seggos and Coven. Carlton-Cambrige was, in fact, the sole underwriter.

24. On or about April 26, 1972 a selling group consisting of Carlton-Cambrige, Stevens Jackson, Gotham Securities, Dickenson Rothbart & Co. and Albert Maguire & Co. began selling the issue. During the period from on or about April 26, 1972 to May 29, Carlton-Cambrige through defendants Rega, Pascall, Levine, Coloff,

Corvino and Weinberg and persons under their direction and supervision, made use of means and instruments of transportation or communication in interstate commerce or the mails to carry shares of Dennison Personnel or confirmations for the sale not accompanied or preceded by a prospectus that met the requirements of the federal securities laws and utilized fraudulent tactics to sell Dennison Personnel stock. These tactics included:

1. Making price projections as to what the after-market price would be;
2. Selling the stock to persons for whom it was not suitable;
3. Soliciting new accounts in connection with this offering and stating that the firm backed this issue and was banking future business upon the performance of this stock; and
4. Stating that there was a great demand for this Dennison's services.

25. Carlton-Cambrige discouraged the sale of the maximum amount of shares to its customers in the original offering. On or about April 26, 1972, Carlton-Cambrige assigned each branch office and individual salesman a maximum number of shares of Dennison Personnel that they could sell to their customers. This maximum allotment was designed to assure that at most only the minimum amount was sold. When an individual salesman or office reached its maximum allotment, the home office would contact the individual and indicate to him that no more shares could be sold. The salesman or office would then be required to stop selling the issue despite the fact that many shares remained unsold and

26. On or about May 29, 1972, Carlton-Cambrige "closed the books" on the original issue of Dennison Personnel and in so doing represented it had sold the minimum number of shares required to be sold pursuant to the terms of the public offering of Dennison common stock. At this time there was only $65,881.25 in the escrow account, located at The Republic National Bank. Had the 3,000,000 share minimum actually been sold and paid for there should have been no less than $300,000 on deposit in the escrow account.

27. On or about May 29, 1972 when the 3,000,000 shares "all or none" segment of the offering was allegedly completed, Carlton-Cambrige was bound by the terms of the registration statement to use its best efforts to sell the remaining 3,000,000 share "best efforts" segment. On or about June 2, 1972, Carlton-Cambrige began trading the stock in the after-market. Carlton-Cambrige did not close the issue, de-register the remaining shares or notify the selling group members and the issuer that it had ceased selling the new issue. During the period from June 2 to on or about June 20 and before the actual closing of the underwriting and the payment of the proceeds to Dennison, Carlton-Cambrige was trading the stock in the after-market. At the same time the selling group was still engaged in the distribution of the original issue. Moreover, while the original issue was being sold at $.10 per share, the after-market price of Dennison Personnel stock, as reflected in the "Pink Sheets" of the National Quotation Bureau, rose to $.14 bid $.17 asked.

28. During the period from June 2 to on or about June 20, 1972, Carlton-Cambrige began to trade the stock of Dennison Personnel in the after-market, notwithstanding the fact that, as stated above, the distribution of the original issue had not yet been completed. The salesmen in the branch offices were told that the stock was open for trading. Thinking the maximum had been sold, they began to sell Dennison Personnel stock to public customers in substantial amounts. During this period defendant Carlton-Cambrige distributed and sold 401,000 shares as principal at prices ranging from $.11 to $.17 in an after-market prematurely and artificially created by defendants Carlton-Cambrige, Rega and Pascall, aided and abetted by Coven and Levin.

29. During the period from April 26 to June 21, 1972, defendants Carlton-Cambrige and Rega upon receipt of subscribers' funds deposited them in the firm checking account, where they were commingled with ordinary revenues and spent in the ordinary course of business. This was in violation of the terms of the registration statement and the prospectus which stated that subscribers' monies would be held in escrow at the Republic Bank until $300,000 was collected. Despite the fact that $300,000 was never collected, the issue was closed.

30. The defendant Republic Bank was aware of the terms of the registration statement and prospectus, as well as the escrow agreement to which it was a party, and notwithstanding such knowledge, released the public subscriber funds from the escrow account and allowed the issue to close.

FIRST CAUSE OF ACTION

(Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rule 17 C.F.R. 240.10b-5 thereunder; and Section 17(a) of the Securities Act, 15 U.S.C. 77a(a) = Fraud in the offer, purchase and sale of securities)

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31. Plaintiff Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 30 of this Complaint.

32. From on or about June 6, 1971 to the date hereof, in the Southern District of New York and elsewhere, the defendants as specified below herein singly and in concert, directly and indirectly, in connection with the offer, purchase and sale of the common stock of Dennison Personnel, by the use of the means and instrumentalities of transportation and communication in interstate commerce and of the mails, have been and are employing devices, schemes and artifices to defraud; obtaining money and property by making untrue statements of material facts, or omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and engaged in acts, practices and courses of business which have operated, are operating, and will operate as a fraud and deceit upon the purchasers and prospective purchasers of Dennison Personnel stock, in that:

1. Defendants Rega and Carlton-Cambrige, aided and abetted by defendants Coven and Levin, entered into an agreement with Dennison Personnel and falsely represented to the investing public:

(a) that they would use their best efforts to sell the entire 6,000,000 shares comprising the Dennison Personnel offering, which was being made on a 3,000,000 share "all or nothing" and an additional 3,000,000 share "best efforts" basis;

(b) that all sums collected from the public subscribers would be held in an escrow account at the Republic Bank and refunded promptly to such subscribers, without interest, if all of the 3,000,000 shares being offered "all or nothing" were not sold within a maximum of 90 business days from the effective date of registration.

2. Defendants Rega, Carlton-Cambrige, Pascall, Levine, Coloff, Corvino and Weinberg engaged in a fraudulent sales campaign to sell the issue and utilized fraudulent price projections and representations as more fully described in paragraph 24 above.

3. Defendants Carlton-Cambrige and Rega, aided and abetted by Coven, Levin and Republic Bank, ceased selling the new issue after the 3,000,000 share "all or none" minimum had allegedly been reached and withdrew funds belonging to public subscribers from the account maintained at Republic Bank despite the fact that less than the minimum of $300,000, as required by the terms of the offering and the escrow agreement had been collected, and, despite the further fact that while obligated to use "best efforts" to sell the remaining shares and after only 22 out of a possible 90 business days in which to complete the offering had passed, began trading the stock while engaged in a distribution of Dennison Personnel stock for Carlton-Cambrige's account.

4. Rega and Carlton-Cambrige, aided and abetted by Coven and Levin, bid for and induced other persons to purchase common stock of Dennison Personnel while and at a time when Carlton-Cambrige was participating in the distribution of said securities.

5. Rega and Carlton-Cambrige, aided and abetted by Pascall, did:

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(i) conspire to and create and artifically stimulate the market for Dennison Personnel stock in order to induce the purchase or sale of Dennison Personnel stock by others;

(ii) induce broker-dealers to trade Dennison Personnel stock and to enter quotes in the "Pink Sheets" of the National Quotation Bureau at prices which (a) were arbitrary; (b) bore no relation to the true market value of the stock and (c) were unrelated to its intrinsic worth;

(iii) used the existence of this fraudulent trading market to sell and otherwise dispose of Dennison Personnel stock in their possession to members of the public, at prices in excess of the stated offering price of ten ($.10) cents per share as reflected in the registration statement and prospectus filed with the plaintiff;

(iv) sold shares of Dennison Personnel to customers in principal transactions without disclosing that Carlton-Cambrige was acting as principal;

(v) dominated, controlled and manipulated the stock price for the common stock of Dennison Personnel; and

(vi) sold shares of Dennison Personnel stock to customers in principal transactions at prices exceeding the market price quoted in the "Pink Sheets" which itself had been manipulated to an artificially high price.

6. Contrary to the express representations of the registration statement and the prospectus to the effect that all monies would be deposited in an escrow account, Rega and Carlton-Cambrige, aided and abetted by Coven, Levin and the Republic Bank, diverted subscribers funds and comingled them with ordinary revenues and used the funds to meet business expenses.

7. Contrary to the express representations of the registration statement and the prospectus to the effect that unless the minimum number of shares were sold the purchasers money would be returned, Rega, Carlton-Cambrige and the Republic Bank, aided and abetted by Coven and Levin, disbursed the public funds without evidence that the minimum number of shares had in fact been sold.

8. Defendants Rega, Carlton-Cambrige, aided and abetted by defendants Coven and Levin, falsely represented to the public subscribers:

(i) that Stevens Jackson Seggos, Inc. was a co-underwriter when in fact that firm appeared only as an accommodation to Coven;

(ii) that Carlton-Cambrige and Stevens Jackson Seggos would use their best efforts to sell all 6,000,000 shares and failed to indicate that sale of the new issue had ceased after 3,073,000 shares and apparently been sold;

(iii) together with defendant Republic Bank, that all sums collected from them would be held in an escrow account at Republic Bank and that such funds would not be released or used for any purpose until the offering had been successfully completed.

9. Defendants Rega, Carlton-Cambrige, aided and abetted by Coven and Levin omitted to disclose to public customers:

(i) that shares in the public offering had to be purchased in 1,000 share blocks; 16a

(ii) that each branch office and salesman at Carlton-Cambrige was given a maximum number of shares that could be sold in the Dennison Personnel offering and that this limitation was designed to assure only the minimum would be sold;

10. Defendants Rega and Carlton-Cambrige, aided and abetted by defendants Pascall, Levine, Coloff, Corvino and Weinberg omitted to disclose:

(i) that it was Carlton-Cambrige's policy to pay salesmen commissions on after-market transactions in Carlton-Cambrige underwritings only on sales to customers and not pay commissions on customer sales of stock which had been the subject of Carlton-Cambrige underwritings;

(ii) that the market in Dennison Personnel was not a free, open and competitive market governed by laws of supply and demand but was instead one entirely a creature of manipulation and artifice;

(iii) that the prices of Dennison Personnel quoted in the "pink sheets" and the prices at which Dennison Personnel was bought and sold were totally unrelated to the true market value of such stock and bore no relation to its intrinsic value; and

(iv) the true manner in which the public offering would be conducted and that as a result of the actions of defendants Dennison Personnel would be denied funds to which it was entitled and would not receive enough funds to carry out the objectives stated in the registration statement and prospectus.

SECOND CAUSE OF ACTION

(Section 10(b) of the Exchange Act, 15 U.S.C. 78j(b) and Rules 17 C.F.R. 240.10b-6 thereunder)

33. Plaintiff Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 32 of this Complaint.

34. Defendants Carlton-Cambrige, Rega and Pascall, aided and abetted by Coven and Levin, while participating as an underwriter in a distribution of the original issue of Dennison Personnel and subsequently as a person on whose behalf such a distribution was made, directly and indirectly, by the use of means and instrumentalities of interstate commerce, of the mails, bid for and purchased for accounts in which they had a beneficial interest, stock of Dennison Personnel which was the subject of such distribution as more fully described in paragraphs 28, 29 and 30 above.

THIRD CAUSE OF ACTION

(Section 5(b)(2) of the Securities Act, 15 U.S.C. 77e(b) - Sale and delivery of securities unaccompanied by proper prospectus)

35. Plaintiff Commission realleges and incorporates by reference each and every allegation in paragraphs 1 through 34 of this Complaint.

36. Defendants Rega and Carlton-Cambrige, aided and abetted by Coven and Levin, carried or caused to be carried through the mails and in interstate commerce the common stock of Dennison Personnel for the purpose of sale and for delivery after sale, and in connection with such sales and deliveries, used a prospectus which did not meet the requirements of Section 10(a) of the Securities Act, in that such prospectus was materially false and misleading with regard to the items specified in paragraph 32 above.

FOURTH CAUSE OF ACTION

(Sections 10(b) and 15(c)(2) of the Exchange Act, 15 U.S.C. 78j(b) and 15 U.S.C. 78o(c)(2) and Rule 17 C.F.R. 240.15c2-4 promulgated thereunder - Fraudulent transmission or maintenance of payments received in connection with an underwriting

37. Plaintiff Commission realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 36 of this Complaint.

38. By the acts described in paragraphs 29 and 30 above, defendants Carlton-Cambrige, Rega and the Republic Bank violated and Coven and Levin aided and abetted violations of Sections 10(b) and 15(c)(2) of the Exchange Act, 15 U.S.C. 78j(b) and 78o(c)(2) and Rules 17 C.F.R. 240.10b-9 and 15c2-4 thereunder in that said defendants accepted payments for Dennison Personnel stock in an "all or none" distribution without:

A. Promptly depositing such money or other consideration in the Republic Bank escrow account, as agent or trustee for the persons who had the beneficial interest therein, until such time as the entire offering was sold or the selling period had expired; and

B. Protecting such money or other consideration received in escrow for the persons who had the beneficial interest therein and then transmitting or returning such funds directly to the persons entitled thereto when the entire offering was sold or the selling period had expired; as required by Rule 17 C.F.R. 240.15c2-4 and 17 C.F.R. 240.10b-9.

WHEREFORE, plaintiff Commission respectfully demands:

I. A preliminary injunction and a final judgment of permanent injunction enjoining defendants Rega, Christian-Paine, Carlton-Cambrige, Coven, Levin, Republic Bank, Pascall, Levine, Coloff, Colvino and Weinberg, their officers, directors, nominees,

agents, servants, employees, successors, attorneys, assigns, and those persons in active concert or participation with them, and each of them, directly and indirectly, in connection with the offer, sale or purchase of the shares of the common stock of Dennison Personnel, or any other security, by the use of the means and instruments of transportation or communication in interstate commerce of of the mails from:

(a) employing any device, scheme or artifice to defraud;

(b) obtaining money or property by means of or otherwise making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any persons.

II. A preliminary injunction and a final judgment of permanent injunction enjoining defendants Rega, Christian-Paine, Carlton-Cambrige, Coven, Levin, their officers, directors, nominees, agents, servants, employees, successors, attorneys, assigns, and those persons in active concert or participation with them, and each of them, directly and indirectly, from carrying or causing to be carried through the mails or in interstate commerce any security with respect to which a registration statement has been filed with the Commission, unless such security is accompanied or preceeded by a prospectus that meets the requirements of subsection (a) of Section 10 of the Securities Act of 1933.

III. A preliminary injunction and a final judgment of permanent injunction enjoining defendants Rega, Christian-Paine, Carlton-Cambrige, Coven and Pascall, their officers, directors,

nominees, agents, servants, employees, successors, attorneys, assigns, and those persons in active concert or participation with them, and each of them, directly and indirectly, from making use of the mails and means and instruments of interstate commerce, or of any facility of any national securities exchange, either alone or with one or more other persons, biding for or purchase for any account in which they, or any one of them, has a beneficial interest, Dennison Personnel or any other security which is the subject of a distribution in which said person or persons having a beneficial interest, is participating or has agreed to participate, or any security of the same class and series, or any right to purchase any such security, or to attempt to induce any person to purchase any such security or right until after such participation has been completed.

IV. A preliminary injunction and a final judgment of permanent injunction enjoining defendants Rega, Christian-Paine, Carlton-Cambrige, Coven, Levin and Republic Bank, their officers, directors, nominees, agents, servants, employees, successors, attorneys-in-law or in fact, assigns, and those persons in active concert or participation with them, and each of them, directly and indirectly, from making use of the mails and means or instruments of interstate commerce while a broker-dealer in securities, or while a person associated with a broker-dealer, to accept any part of the sale price of any security being distributed in any distribution of securities, other than a firm committment underwriting, unless:

(a) the money or other consideration received is promptly transmitted to the persons entitled thereto; or

(b) if the distribution is being made on an "all or none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs,

(1) the money or other consideration received is promptly deposited in a separate bank account as agent or trustee for the persons who have the beneficial interest therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto, or

(2) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interest therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred; and such funds are so transmitted or returned.

V. Such other and further relief as the nature of the case may require and the Court may deem proper.

Respectfully submitted,

William D. Morin

WILLIAM D. MORIN
Regional Administrator

Attorney for Plaintiff
SECURITIES AND EXCHANGE COMMISSION
New York Regional Office
26 Federal Plaza
New York, New York 10007
Telephone No: (212) 264-1636

Of Counsel:

William Nortman
Thomas R. Beirne
Robert A. Heghmann

Dated: New York, New York
July 5, 1973

ANSWER

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

JOSEPH REGA, JR., et al,

Defendants

(LWP)

73 Civ. 2944

BERNARD JAY COVEN, by his attorneys, FELDSHUH & FRANK, in answer to the complaint herein, respectfully shows and alleges :

1. Denies each and every allegation contained in paragraph 1 of the complaint insofar as it relates to or purports to relate to him.

2. With respect to paragraphs 2,3 and 4 of the complaint the allegations therein state conclusions of law to whic no responsive pleading is required and he denies that the allegations of said paragraphs have any application to him.

3. Denies each and every allegation contained in paragraph 11 of the complaint, except admits said defendant has a office where alleged in the City of New York and that pursuant to an escrow agreement it agreed to and did maintain an escrow accou to receive certain subscriber's funds in connection with the publi offering of Dennison Personnel.

4. With respect to paragraph 18 of the complaint

admits that a Registration Statement for the public offering of the common stock of Dennison was declared effective by the Commissio on April 26, 1972, but refers to the document which is on file with the Commission and denies that the underwriter was "obligated" to use its "best efforts" to sell "the remaining 3,000,000 shares for the duration of the selling period."

5. Admits that Dennison retained the services of the defendant as its attorney with respect to a public offering of the stock of Dennison and that said defendant is experienced and except as so admitted denies each and every allegation contained therein of paragraph 19 of the complaint.

6. Denies each and every allegation contained in paragraph 21 of the complaint except admits that co-underwriter Stevens, Jackson Seggos, Inc. was a broker dealer whose principal was E.P. Seggos.

7. Denies each and every allegation contained in paragraph of the complaint numbered 22, except admits that an escrow account was opened at defendant Republic Bank in connecti with the public offering of the common stock of Dennison.

8. Denies each and every allegation contained in paragraph 23 of the complaint except admits that the Dennison re gristration statement and prospectus indicated that Carlton-Cambr and Stevens Jackson were co-underwriters for the Dennison issue.

9. On information and belief admits that on or about April 26, 1972, a selling group consisting of the broker-dealers named by the plaintiff in paragraph 24 of the complaint, and except as so admitted denies knowledge or information sufficient to form a belief with respect to each and every allegation contained in said paragraph 24 of the complaint herein.

10. Denies knowledge or information sufficient to form a belief with respect to each and every allegation contained in paragraph 25 of the complaint.

11. Denies each and every allegation contained in paragraph 26 of the complaint, except that with respect to the allegation that "on or about May 29, 1972, Carlton Cambrige "closed the books"" denies knowledge or information sufficient to form a be--lief with respect thereof.

12. Denies each and every allegation contained in paragraph 27 of the complaint.

13. With respect to paragraph 28 of the complaint denies knowledge or information thereof sufficient to form a beli with respect to each and every allegation therein, except denies each and every allegation therein as pertains to him.

14. Denies knowledge or information sufficient to form a belief with respect to each and every allegation contained in paragraph 29 of the complaint, except denies that the terms

of the Registration Statement and the prospectus provide as alleged therein and refer to such documents filed with the Commission, and except denies that the issue was closed despite the fact that $300,000 was never collected as alleged therein.

15. On information and belief admits that defendant Republic Bank was aware of the terms of the prospectus and escrow agreement, that it was a party to the escrow agreement and that it released subscribers' funds from the escrow account, except as so admitted denies each and every allegation contained therein of paragraph 30 of the complaint.

16. With respect to paragraph 31 of the complaint repeats and realleges the answers set forth in paragraphs 1 through 15 herein in answer to paragraph 31 of the complaint.

17. Denies each and every allegation contained in paragraph 32 of the complaint insofar as it relates or purports to relate to him, including in such denial all of the various sub-paragraphs and sub-sections insofar as they relate or purport to relate to him.

18. With respect to paragraph 33 of the complaint

he repeats his answers to paragraphs 1 through 32 of the complaint herein.

19. Denies each and every allegation contained in paragraph 34 of the complaint herein insofar as they pertain to him.

20. With respect to paragraph 35 of the complaint he repeats his answers to paragraphs 1 through 34 of the complaint.

21. Denies each and every allegation contained in paragraph 36 of the complaint.

22. With respect to paragraph 37 of the complaint he repeats his answers to paragraphs 1 through 36 of the complaint.

23. Denies each and every allegation contained in paragraph 38 of the complaint insofar as it relates or purports to relate to him and denies knowledge or information sufficient to form a belief thereof with respect to the allegations relating to other defendants.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

24. That the extraordinary remedy of an injunction against the defendant Coven is not appropriate in that the complaint fails to state a claim against the said defendant upon which such relief can be granted.

67. Subsequent to April 26, 1972 with the exception of

ANSWER

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

25. Stevens Jackson, not a party to this action, was one of the underwriters of Dennison, and upon information and belief delivered a letter to defendant Republic Bank advising said defendant Republic Bank of commission deductions and upon which letter the said defendant Republic Bank relied. That the complaint herein is deficient since it fails to join an indispensible party within the meaning of Rule 19 of the Federal Rules of Civil Procedure.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

26. Paragraph 3.01(e) of the Underwriting Agreement between Dennison and its Underwriters which was submitted to the Commission as part of the Registration Statement and referred to in the prospectus permits the deduction of commissions and expense allowances prior to remittances by the underwriters for shares sold.

ANSWER

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

27. The relief sought by the plaintiff is equitable in nature.

28. That the plaintiff has come into this Court with unclean hands and thus cannot invoke this Court's equitable jurisdiction against defendant Coven.

29. That the complaint herein, paragraph 21 alleges that co-underwriter/Jackson Stevens Seggos, Inc. sold no shares and allege in paragraph 23 of the complaint herein that "Carlton-Cambrige was in fact,the sole underwriter".

30. That at the time when such allegations were made and at the time the complaint was signed by the plaintiff's attorney, the plaintiff was in possession of documents and taken testimony which evidenced that:

(a) Stevens Jackson had offered directly or through its selling group members approximately 711,000 shares of the Dennison issue;

(b) Stevens Jackson had sold directly or through its selling group members approximately 351,000 shares of the Dennison issue;

(c) That the failure to have named Stevens

ANSWER

Jackson as a co-underwriter would have been a violation of the Securities Act of 1933, as amended.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

31. That the Court lacks jurisdiction over the subject matter of this complaint insofar as it relates to the defendant Coven has not and is not now engaged, nor is he about to engage in any acts, practices or courses of conduct which constitute or would constitute violations of the Securities Act of 1933, as amended, the Securities Exchange Act of 1934, as amended, or any rule or regulation adopted by the Securities and Exchange Commission under either of said Acts.

WHEREFORE, defendant Coven demands judgment dismissing the complaint herein against him, together with the costs and disbursements of the within action.

FELDSHUH & FRANK

By /s/ Marvin Frank
Member of the Firm
Attorneys for Defendant
BERNARD JAY COVEN
Office & P.O. Address
144 East 44 Street
212 Mu 7 8930

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION

Plaintiff,

-against-

JOSEPH REGA, JR.
CHRISTIAN-PAINE & CO., INC.
CARLTON-CAMBRIGE & CO., INC.
BERNARD JAY COVEN
ROBERT B. LEVIN
THE REPUBLIC NATIONAL BANK OF NEW YORK
ROSS W. PASCALL
LOUIS LEVINE
BERNARD A. COLLOFF
JOSEPH CORVINO
HAROLD WEINBERG

Defendants.

73 Civil 2944 (JEL)

PRE-TRIAL ORDER

I

JURISDICTIONAL STATEMENT

A. Plaintiff Commission

The Commission is authorized to bring this action by Section 20(b) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. 77t(b) and Section 21(e) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. 78u(e). This Court has jurisdiction under Section 22(a) of the Securities Act, 15 U.S.C. 77v(a) and Section 27 of the Exchange Act, 15 U.S.C. 78aa.

B. Defendant Republic

As stated in detail in its Answer in this action, defendant Republic National Bank of New York ("Republic") contends that the Court lacks jurisdiction for each of the following reasons:

1. Republic did not use the United States mails or any means or instrumentality of interstate commerce directly or indirectly, in connection with the violations alleged in the complaint, and therefore the Court lacks jurisdiction over the subject matter of the complaint against defendant Republic.

2. If, as alleged, the exact amount of $300,000 had to be in the escrow account for a valid closing to occur, Republic's release of the funds on June 21 to Dennison Personnel, Inc. ("Dennison") was not in connection with any purchase or sale of securities and therefore cannot subject Republic to any liability under Section 10(b) of the Exchange Act as alleged.

3. If, as alleged, there was a violation of Section 15(c) of the Exchange Act and Rule 15c2-4 thereunder in connection with the handling of the funds in the escrow account, that violation cannot be extended beyond "the broker or dealer" who participated in the sale of the security as set forth in that Section and Rule.

C. Other Defendants

The other defendants do not contest jurisdiction.

II

AMENDMENTS TO PLEADINGS

There are no such amendments at this time.

III

UNDISPUTED FACTS

1. On April 26, 1972 the Commission declared effective a registration statement with respect to a public offering of the common stock of Dennison. The terms and conditions of the offering are set forth therein and the registration statement constitutes

an official public record of which this Court may take notice (Pl. Exh. 1).

2. At the time of the offering, defendant Joseph Rega, Jr. ("Rega") was president of defendant Carlton-Cambrige & Co., Inc. ("Carlton-Cambrige.")

3. At the time of the offering, defendant Carlton-Cambrige was a New Jersey corporation registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act, 15 U.S.C. 78o(a). Defendant Carlton-Cambrige was co-underwriter with Stevens, Jackson Seggos ("Stevens Jackson") of the Dennison public offering.

4. Defendant Bernard J. Coven ("Coven") is an attorney licensed to practice law in the State of New York. Coven served as counsel to the issuer in the Dennison offering. Coven specialized in the practice of corporate law including securities law and had more than 20 years of experience in this field. Coven was responsible for preparation of the amended registration statement which was declared effective by the Commission on April 26, 1972 in connection with the Dennison offering.

5. Defendant Robert B. Levin ("Levin") is an attorney licensed to practice law in the State of New York. He served as counsel for the underwriters in the Dennison offering.

6. Defendant Republic was designated in the registration statement as escrow agent to receive subscriber funds in connection with the Dennison offering.

21. The registration statement filed with the Commission and the prospectus distributed to public investors in connection with the Dennison offering provided that the underwriters, defendant Carlton-Cambrige and Stevens Jackson would use their "best efforts" to sell a total of 6,000,000 shares of Dennison stock at $.10 per share during the maximum 90 business day selling period (60 business days, plus an additional 30 business day period upon consent of the parties) which commenced on April 26, 1972.

22. The registration statement and prospectus provide that in the event that at least 3,000,000 shares of Dennison stock were not sold within the maximum 90 business day selling period, all funds received from subscribers in the offering would be returned, without interest or deduction.

23. In or about June, 1971, Gerald Bowes ("Bowes"), president of Dennison, approached defendant Coven and retained him as special counsel to Dennison for the purpose of effecting a public offering of the corporation's securities.

24. Defendant Republic had no dealings with any other defendants in this action prior to April, 1972.

25. At that time, defendant Coven, who was acting as counsel for Dennison, approached defendant Republic and asked whether it would be interested in acting as an escrow agent in connection with the offering of the common stock of Dennison.

26. The underwriters for the offering were identified to Republic among others as defendant Carlton-Cambrige and Stevens Jackson.

27. As is its custom when considering a new client, defendant Republic received the appropriate credit reports on both underwriters from Dun & Bradstreet which reports were not unfavorable.

28. The cover page of the prospectus which was part of the Dennison registration statement provided that all monies received will be deposited in escrow at the Republic National Bank of New York, 452 Fif th Avenue, New York, N.Y., and returned promptly to subscribers in full without interest or deduction unless at least 3,000,000 shares are sold within 60 business days of the date hereof, or within an additional 30 business days, if such period is extended by mutual agreement between the Company and the Underwriters.

29. Pages 15 and 16 of the prospectus provided that funds received from subscribers would be deposited in an escrow account with defendant Republic and that if at least 3,000,000 of the offered shares were not sold and paid for within the maximum 90 business day selling period, then all of the monies collected from subscribers would be promptly returned in full to subscribers, without interest or deduction; and that "the foregoing is a brief summary of the provisions of the Underwriting Agreement. It does not purport to be a complete statement of the terms and conditions of any such document. A copy of such document is filed as an Exhibit to the Registration Statement, of which this Prospectus forms a part, and reference is made to such Exhibit for the complete terms."

other than a firm commitment underwriting, unless:

30. Section 3.01(b) of the underwriting agreement signed by defendant Rega for defendant Carlton-Cambrige with respect to the Dennison offering which is also part of the registration statement, provided that until 3,000,000 shares of stock were sold, the underwriters would deposit all funds received with the defendant Republic in an escrow account.

31. Section 3.01(e) of the Underwriting Agreement provided that subject to the sale and receipt of funds for not less than 3,000,000 shares of the shares to be offered herein, the underwriters would receive a commission of ten per cent plus certain expense allowances. That subsection further stated that such commission and expense allowances shall be deductible by the underwriters prior to remittance to Dennison on account of the shares sold.

32. The escrow agreement entered into by Stevens Jackson, Dennison and defendants Carlton-Cambrige (by Rega) and Republic, in connection with the Dennison offering and filed as part of the registration statement provides in one of its provisions that on the delivery date, the escrow agent (defendant Republic) would deliver to Dennison and to the underwriters, its checks in the amounts of $255,000 and $45,000, respectively, provided that collected funds sufficient to cover such payments were in the escrow account on the delivery date (Section 2b).

33. The escrow agreement further provided in one of its provisions that in the event there was not $300,000 in the escrow account on the delivery date, of if no delivery date were set as

a result of the fact that all 3,000,000 shares of common stock were not sold on or before September 5, 1972, then upon notice given by the underwriters or Dennison to the escrow agent, all of the monies in the escrow account were to be refunded in full within 12 business days to the purchasers of the stock, without interest or deductions (Section 2d).

34. The escrow agreement further provided in one of its provisions that the underwriters were to deposit with, or to mail for deposit to, the escrow agent not later than the third business day following the receipt of the same; all funds. . . which the underwriters had received for the purchase of shares of Dennison stock accompanied by appropriate letters of transmittal, listing the names and addresses of the purchasers of the stock and the number of shares purchased by each (Section 1).

35. At or about the time of execution of the escrow agreement, defendant Republic recieved a copy of the Dennison prospectus and underwriting agreement, and through its officers, was aware of the provisions contained therein.

36. On April 25, 1972, a due diligence meeting was held at the offices of the Commission in New York City. The parties present included Jules Ziffer, Bowes and defendants Rega, Coven and Levin. The due diligence requirements for the offering as discussed at the meeting were summarized in a letter forwarded to the Commission by defendant Levin and endorsed by defendant Coven, which letter is Commission's proposed Exh. 31.

37. On or about May 29, 1972, defendant Rega decided to stop selling Dennison new issue stock and attempted to schedule a closing for the offering. Defendant Carlton-Cambrige sold no further shares in the original offering after this date. 38a

38. Defendant Coven, counsel for Dennison, prepared an opinion dated May 30, 1972, which recited that it was being issued pursuant to paragraph 6.06 of the Underwriting Agreement and which was delivered to the underwriters and defendant Republic on or before June 12, 1972.

39. [Deleted]

40. Commencing on or about on May 31, 1972, defendant Republic received at times confirmations and net proceeds of the sales of the shares of Dennison from certain of the underwriters, that is, an amount equal to commissions and expenses due to the selling broker-dealers under the Underwriting Agreement was deducted, prior to remittance to defendant Republic.

41. Each confirmation received by Republic after May 30, 1972 was stamped "Paid" and reflected a payment date prior to May 30, 1972.

42. Defendant Carlton-Cambrige had not received notice from its bookkeeping staff that all checks delivered by subscribers had cleared when Rega decided to stop selling Dennison new issue stock.

43. On June 2, 1972 defendant Carlton-Cambrige sold 120,500 shares of Dennison stock for its own account to public customers. Of these, 100,000 shares were sold at $.11 per share and 20,500 shares were sold at $.13 per share.

44. On June 5, 1972 defendant Pascall, while employed as a branch manager by defendant Carlton-Cambrige ordered at market the purchase for his account of 35,000 shares of Dennion through

51. As checks were received from subscribers to the Dennison offering in payment for their shares, defendant Carlton-Cambrige deposited checks in its account at Commercial Trust Co. of New Jersey ("Commercial Trust"). Defendant Carlton-Cambrige later wrote checks against this account for deposit in the escrow account at defendant Republic. 39a

52. Defendant Republic received its first deposit for the escrow account on May 19, 1972 when it received a check from defendand Carlton-Cambrige drawn on the firm's account at Commercial Trust in the amount of $27,320, a covering letter and confirmations for the sale of 273,200 shares of Dennison stock.

53. Defendant Republic received its second deposit for the escrow account on May 22, 1972 when it received a check from defendant Carlton-Cambrige drawn on the firm's account at Commercial Trust in the amount of $21,650, a covering letter and confirmations for the sale of 216,500 shares of Dennison.

54. On May 31, 1972 the balance in the escrow account at defendant Republic was $65,881.25.

55. On May 31, 1972 the balance in defendant Carlton-Cambrige's regular checking account at Commercial Trust was $73,468.82, as reflected by Pl. Exh. 39.

56. On June 5, 1972 the balance in the escrow account at defendant Republic was $73,981.25.

57. On June 5, 1972 the balance in defendant Carlton-Cambrige's regular checking account at Commercial Trust was $65,666.84 as reflected by Pl. Exh. 39.

58. On June 12, 1972 when the above-referenced gathering occurred, there was a balance of $231,003 in the escrow account. Defendant Rega brought with him to the gathering an uncertified check for $31,493.75 drawn on defendant Carlton-Cambrige's account at Commercial Trust and submitted a letter stating that defendant Carlton-Cambrige had deducted its commissions and expenses in advance and therefore the balance in the account plus this check (a total of $262,496.75) was sufficient to close. 49a

59. At the request of defendant Republic, defendant Coven signed and submitted a letter stating that when the checks then on deposit in the escrow account had cleared, defendant Republic was to deliver from the escrow account to Stevens Jackson $3,682.50 and to Dennison the balance. The letter was dated June 13, 1972.

60. On June 13, 1972, Jules Ziffer ("Ziffer") wrote a letter, on behalf of Stevens Jackson, to defendant Republic stating that 351,000 Dennison shares were sold by Stevens Jackson and its selling group, and that Gotham Securities, a member of the selling group, had remitted net proceeds to the escrow agent (Pl. Exh. 9).

61. On June 15, 1972 the American Stock Transfer Co. ("AST") the transfer agent for Dennison, received instructions from defendant Carlton-Cambrige to prepare certificates for 2,724,000 shares of Dennison, of which 1,000,145 shares were in the name of defendant Carlton-Cambrige.

62. On or before June 19, 1972 AST delivered certificates representing 3,073,500 shares to defendant Republic. Subsequently, no further certificates representing shares purchased in the original Dennison offering were prepared or delivered. Republic verified the number of shares delivered and prepared delivery tickets to the various members of the selling group (Pl. Exh. 22).

63. On June 20, 1972 defendant Republic sent a payment advice to defendant Carlton-Cambrige and Stevens Jackson indicating that the net amount of $31,493.75 was paid and credited to the escrow account. On the following day, defendant Republic made the following disbursements from the escrow account:

to Dennison	$258,064.25
to Stevens Jackson	3,682.50
to Republic	750.00

41a

On that day prior to disbursements, there was a balance in the escrow account of $263,496.75 of which $1,000 was still in collection.

64. Having verified that 3,073,500 shares were being issued, being in a position to deliver to Dennison a sum reflecting in excess of the net proceeds from the minimum amount of the offering, and after being advised by all parties to the Underwriting Agreement that commissions and expenses had been deducted from the proceeds deposited in the escrow account, which altogether would have produced a balance in excess of $300,000 in the escrow account, defendant Republic distributed the $262,496.75 in the escrow account and delivered the share certificates.

65. The escrow account was closed on June 27, 1972 when defendant Republic issued a check to Dennison in the amount of $1,000.

66. On June 21, 1972 Dennison received a check drawn on the escrow account in the amount of $258,064.25 which exceeded by $3,000 the net proceeds which would be due to the issuer in the event the minimum amount of the offering (3,000,000 shares) had been sold.

67. Subsequent to April 26, 1972 with the exception of de-registration, the Dennison registration statement was not amended, "stickered" or supplemented in any way.

68. Defendant Carlton-Cambrige entered its name in the pink sheets of the National Quotation Bureau as a market maker in the common stock of Dennison on June 15, 1972 (Pl. Exh. 38).

69. Between June 15, 1972 and October 31, 1972 defendant Carlton-Cambrige had the highest bid in the National Quotation Bureau pink sheets for Dennison stock on every single trading day (Pl. Exh. 38).

70. On June 29, 1972 defendant Coven telephoned Steven J. Glusband, an SEC investigator who was investigating the Dennison offering, and inquired of Glusband as to the nature of the investigation and which violations, if any, were being alleged.

71. On July 7, 1972 and July 17, 1972, defendant Coven telephoned the SEC office of Chief Counsel in Washington, D.C., and made a general inquiry concerning Dennison.

72. The Commission's exhibits indicate that a letter was written by the staff of the Commission to defendants Levin and Coven on May 26, 1972 expressing concern that the underwriters were not submitting bi-weekly sales reports to the Commission. A copy was not sent to defendant Republic.

73. Commission's counsel has indicated that the president of Stevens Jackson appeared and testified in an investigative proceeding on June 14, 1972. The Commission did not formally advise the defendants herein of this appearance.

JUDGMENT APPEALED FROM

43a

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION Plaintiff, -against- JOSEPH REGA, Jr. CHRISTIAN-PAINE & CO., INC. CARLTON-CAMBRIDGE & CO., INC. BERNARD JAY COVEN ROBERT E. LEVIN THE REPUBLIC NATIONAL BANK OF NEW YORK ROSS W. PASCALL LOUIS LEVINE BERNARD A. COLLOFF JOSEPH CORVINO HAROLD WEINBERG Defendants.	73 Civil 2944(LWP) FINAL JUDGMENT

U.S. DISTRICT COURT FILED AUG 20 1975 S.D. OF N.Y.

Plaintiff, Securities and Exchange Commission ("Commission"), having filed its Complaint herein on July 5, 1973, and the defendants having appeared herein and a trial on the merits having been held between January 2, 1974 and March 7, 1974, and the Court having issued an opinion in this matter on June 30, 1975 containing the Court's findings of fact and conclusions of law pursuant to Rule 52(a) of the Federal Rules of Civil Procedure, it is hereby

ORDERED, ADJUDGED AND DECREED that:

MICROFILM AUG 20 1975

I. Defendants Joseph Rega, Jr., Christian-Paine & Co., Inc., Carlton-Cambridge & Co., Inc., Ross W. Pascall, Louis Levine, Bernard A. Colloff, Joseph Corvino and Harold Weinberg, their officers, directors, nominees, servants, employees, successors, agents, attorneys, assigns and those persons in active concert and participation with them, and each of them, directly and indirectly, in connection with the offer, purchase or sale of the common stock of Dennison Personnel, Inc., or any other security, by the use of the means and instruments of transportation or communication in interstate commerce or of the mails, are hereby permanently enjoined from:

(a) employing any device, scheme or artifice to defraud;

(b) obtaining money or property by means of or otherwise making any untrue statements of a material fact or omitting to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or

(c) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

II. That defendant Bernard J. Coven, his nominees, servants, employees, successors, agents, attorneys, assigns

and those persons in active concert and participation with him, and each of them, directly and indirectly, in connection with the offer or sale of the common stock of Dennison Personnel, Inc., or any other security by the use of the means and instruments of transportation or communication in interstate commerce or of the mails, is hereby permanently enjoined from engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person in connection with the distribution of any security.

III. Defendants Joseph Rega, Jr., Christian-Paine & Co., Inc. and Carlton-Cambridge & Co., Inc., their officers, directors, nominees, servants, employees, successors, agents, attorneys, assigns and those persons in active concert and participation with them, and each of them, directly and indirectly, in connection with the offer, purchase or sale of the common stock of Dennison Personnel, Inc., or any other security, are hereby permanently enjoined from carrying or causing to be carried through the mails or in interstate commerce any security with respect to which a registration statement has been filed with the Commission, unless such security is accompanied or preceded by a prospectus that meets the requirements of subsection (a) of Section 10 of the Securities Act of 1933.

IV. Defendants Joseph Rega, Jr., Christian-Paine & Co.,

Inc., Carlton-Cambridge & Co., Inc., Bernard Jay Coven and Ross W. Pascall, their officers, directors, nominees, servants, employees, successors, agents, attorneys, assigns and those persons in active concert and participation with them, and each of them, are hereby permanently enjoined from making use of any means or instrumentality of interstate commerce, or of the mails, or of any facility of any national securities exchange, (1) while an underwriter or prospective underwriter in a particular distribution of the common stock of Dennison Personnel, Inc., or any other security, or (2) while an issuer or other person on whose behalf such a distribution is being made, or (3) while a broker, dealer, or other person who has agreed to participate or is participating in such a distribution, directly or indirectly, either alone or with one or more other persons, to bid for or purchase for any account in which they, or any one of them, has a beneficial interest, the common stock of Dennison Personnel, Inc., or any other security which is the subject of such distribution, or any security of the same class and series, or any right to purchase any such security, or to attempt to induce any person to purchase any such security or right until after they, or any one of them, have completed their participation in such distribution, as prohibited under Rule 10b-6,

17 C.F.R. 240.10b-6.

V. Defendants Joseph Rega, Jr., Christian-Paine & Co., Inc., Carlton-Cambridge & Co., Inc. and Bernard Jay Coven, their officers, directors, nominees, servants, employees, successors, agents, attorneys, assigns and those persons in active concert or participation with them, and each of them, are hereby permanently enjoined from directly or indirectly, making use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange, in connection with the offer or sale of the common stock of Dennison Personnel, Inc., or any other security, to make any representation:

(1) to the effect that the security is being offered or sold on an "all or none" basis, unless the security is part of an offering or distribution being made on the condition that all or a specified amount of the consideration paid for such security will be promptly refunded to the purchaser unless (A) all of the securities being offered are sold at a specified price within a specified time, and (B) the total nmount due to the seller is received by him by a specified date; or

(2) to the effect that the security is being offered on any other basis whereby all or part of the consideration paid

for any such security will be refunded to the purchaser if all or some of the securities are not sold, unless the security is part of an offering or distribution being made on the condition that all or a specified part of the consideration paid for such security will be promptly refunded to the purchaser unless (A) a specified number of units of the security are sold at a specified price within a specified time, and (B) the total amount due to the seller is received by him by a specified date.

VI. Defendants Joseph Rega, Jr., Christian-Paine & Co., Inc. and Carlton-Cambridge & Co., Inc., their officers, directors, nominees, servants, employees, successors, agents, attorneys, assigns and those persons in active concert and participation with them, and each of them, are hereby permanently enjoined from making use of the mails or of any means or instrumentality of interstate commerce, while a broker or dealer in securities, to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, the common stock of Dennison Personnel, Inc., or any other security (other than U.S. Tax Savings Notes, U.S. Defense Savings Stamps or U.S. Defense Savings Bonds, Series E, F and G), unless such person, at or before the completion of each such transaction, gives or sends to such customer written notification disclosing:

(1) whether he is acting as a broker for such customer, as a dealer for his own account, as a broker for some other person, or as a broker for both such customer and some other persons; and

(2) in any case in which he is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and time when such transactions took place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by him in connection with the transaction.

VII. Defendants Joseph Rega, Jr., Christian-Paine & Co., Inc. and Carlton-Cambridge & Co., Inc., their officers, directors, nominees, servants, employees, successors, agents, attorneys, assigns and those persons in active concert or participation with them, and each of them, are hereby permanently enjoined from making use of the mails or any means or instrumentality of interstate commerce, while a broker or dealer in securities, to accept any part of the sale price of the common stock of Dennison Personnel, Inc., or any other security, being distributed in any distribution of securities,

other than a firm commitment underwriting, unless:

(1) the money or other consideration received is promptly transmitted to the persons entitled thereto; or

(2) if the distribution is being made on an "all or none" basis, o. on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs:

((a) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interest therein, until the appropriate event or contingency has occurred, and then the funds are promptly transmitted or returned to the persons entitled thereto; or

(b) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interest therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate event or contingency has occurred.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Commission's Complaint dated July 5, 1973 as to the defendant The Republic National Bank of New York is hereby in all respects dismissed with prejudice.

IT IS FURTHER ORDERED that jurisdiction is hereby reserved over all defendants, except the Republic National Bank of New York, to make such other and further orders and to issue such directions as the Court shall, on application or upon its own motion, deem necessary or appropriate for the accomplishment of the purpose of this order.

Dated: New York, New York
August 19, 1975

Lawrence W. Pierce

LAWRENCE W. PIERCE
U. S. D. J.

JUDGMENT ENTERED: - 8/20/75 -

Raymond F. Burghardt

CLERK

Maps #1

OPINION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

- v - : 73 Civ. 2944

JOSEPH REGA, JR., et al., :

Defendants. :

----------x

APPEARANCES:

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LAWRENCE W. PIERCE, D.J.

OPINION

This is an action for injunctive relief in which the Securities and Exchange Commission (Commission) has charged the defendants with various violations of the

Securities Act of 1933, 15 U.S.C. §77a(a) et seq., as amended, and the Securities Exchange Act of 1934, 15 U.S.C. §78(a) et seq., as amended, and rules promulgated thereunder. A trial was held on this matter at the conclusion of which the Court reserved decision. Having found that it has jurisdiction[1/] over the parties and subject matter of this action the Court makes the following findings of fact and conclusions of law pursuant to Rule 52(a) of the Fed.R.Civ.P.

On April 26, 1972 the Commission declared effective a registration statement with respect to the public offering of the common stock of Dennison Personnel, Inc. (Dennison). The listed underwriters for this offering were defendant Carlton-Cambrige & Co., Inc. (Carlton), a New Jersey broker-dealer of which defendant Joseph Rega, Jr. was President and Chief Executive Officer and Stevens Jackson Seggos, Inc. (Stevens Jackson), another broker-dealer. Defendant Bernard Jay Coven acted as counsel for the issuer and defendant Robert B. Levin served as counsel to the underwriters.[2/] The remaining individual defendants were employees of Carlton. Defendant Ross W. Pascall was the resident manager of the West Caldwell office of Carlton and defendant Louis Levine acted in a similar capacity at Carlton's Fort Lee office. Levine was also a registered representative. The other three individual

defendants--Bernard A. Colloff, Joseph Corvino and Harold Weinberg--were employed by Carlton as registered representatives. Also named as defendant is Christian-Paine & Co., Inc. (Christian), the Commission having claimed that Christian is merely the "successor" of Carlton. Defendant Republic National Bank of New York (Republic) acted as escrow agent for the receipt of subscribers' funds in connection with the offering.

Under the terms of the Dennison public offering, as expressed in the registration statement and in the prospectus which was disseminated to members of the investing public, a total of 6,000,000 shares of Dennison stock was to be offered at .10¢ per share. The underwriters represented that they would use their best efforts to sell the entire offering on a "3,000,000 shares or none" basis. This meant that if at least 3,000,000 shares were not sold within the maximum ninety day[3/] selling period, all funds received from public subscribers would be promptly refunded without interest. Pending the sale of the minimum amount of shares, subscribers' funds were required to be deposited in an escrow account maintained with the defendant Republic pursuant to an escrow agreement. More precisely the escrow agreement (Section 1) provided that the underwriters were to deposit with, or to

mail for deposit to, the escrow agent not later than the third business day following the receipt of the same all funds which the underwriters had received for the purchase of shares of Dennison stock accompanied by appropriate letters of transmittal listing the names and addresses of the purchaser of the stock and the number of shares purchased by each. At such time as the minumum number of shares (3,000,000) had been sold a "minimum closing" would take place. It was expected that the fact that the minimum had been sold would be established when the underwriters deposited with the bank $300,000 reflecting the sale of 3 million shares at .10¢ per share. At that point the bank was to remit to the issuer $255,000 and the balance would be turned over to the underwriters to cover their commissions and expenses. After the minimum closing had taken place the underwriters were committed to use their "best efforts" during the remainder of the selling period to sell as many of the remaining balance of the offering as they possibly could. Unhappily this rather simple procedure was not followed and from the very outset the offering was marred by a number of irregularities.

Initially Carlton through Rega apparently decided to limit its efforts to a sale of the minimum portion of the offering despite the language in the registration statement

and prospectus which assured the investing public that "best efforts" would be made to sell the entire issue of 6,000,000 shares for the benefit of Dennison. Thus Rega established an allotment system which provided each of the branch offices of Carlton with a maximum number of shares for distribution by its salesmen. These allotments totalled, in the aggregate, approximately 3,000,000 shares or, in other words, the minimum number of shares which could be sold without having to refund monies collected from subscribers. With respect to the other underwriter, Stevens Jackson, the Commission has claimed that Stevens Jackson had no intention of selling any shares of the issue at all. The Commission alleges that Stevens Jackson through its principal, Elephtherios P. Seggos, had an arrangement with Coven whereby it would appear as underwriter as an "accommodation." The actual sale, it is charged, would be undertaken by one of Coven's employees and Stevens Jackson would merely send out confirmations of purchases and collect the money. The evidence adduced at the trial failed to support this allegation with respect to the Dennison offering. In fact, it is uncontroverted that Stevens Jackson did sell 80,000 of the shares. In addition, a selling group did materialize--perhaps fortuitously--under the apparent aegis of Stevens Jackson. This selling group managed to sell an

additional 266,000 shares. However, it appears that Seggos personally had no intention of selling any of the shares. In fact Seggos was out of the country during most of the selling period. To that extent the clear implication in the prospectus that Seggos would be personally involved in the sales effort was erroneous. Also it would appear that the representation in the registration statement and prospectus that best efforts would be used to sell the entire issue was false. No principal from Stevens Jackson ever indicated that it would engage in such efforts. At most the evidence indicates that Stevens Jackson's one and only salesman, Ziffer, would attempt to sell some of the shares. As noted, Carlton only intended to sell at most one-half of the offering. Thus, from the outset, serious undisclosed limitations were imposed on the handling of the offering.

The Sale of the Original Issue

The sales effort by Carlton's salesmen was riddled with irregularities. Salesmen recommended the stock to customers of the firm without having made an effort to determine that such an investment was suitable for the particular customer concerned. Also they failed to bring to their customer's attention material facts in connection with the purchases of Dennison shares by such customers.

In short, there was a high-powered concentrated drive to dispose of the alloted shares regardless of the particular circumstances relating to each sale. A few examples will suffice. Defendant Levine sold 1,000 shares of the stock to a student--based on a "cold-call"--without making any meaningful inquiry into the stock's suitability for that particular person. In making this sale he neglected to mention that the stock was speculative or that Dennison had a large working capital deficit. Defendant Colloff also sold the stock without disclosing Dennison's financial condition. In addition he "touted" the stock to two of his customers predicting that its price would rise without having any valid basis whatsoever for such an opinion. Defendant Corvino engaged in similar practices in selling the Dennison issue. He did not investigate the stock's suitability to a particular customer, failed to disclose Dennison's financial status and engaged in price projections. Defendant Weinberg persuaded a customer to buy 1,000 shares of Dennison without making any efforts to determine suitability. In so doing he also predicted--without any valid basis--that the stock would go up to .50¢. To another customer he indicated that the price of the stock would triple in a few months.

While this somewhat dubious sales effort was progressing, there was at least some semblance of compliance on the part of Carlton through its president, Rega, with regard to some of the provisions of the escrow agreement. On May 19, 1972 Republic received from Carlton its first deposit for the escrow account in the amount of $27,320 representing the gross funds from the sale of 273,200 shares of Dennison stock together with a covering letter and confirmations for such sales. Three days later--on May 22, 1972--Carlton made a second deposit of $21,650 evidencing the sale of 216,500 shares of the stock. The deposit was again accompanied by a covering letter and the respective confirmations of the sales. Carlton made no further deposits into the escrow account until June 7, 1972.

It should be noted that as funds relating to sales of the shares were being received by Carlton, they were deposited into a Carlton business checking account at Commercial Trust Co. of New Jersey and later Carlton wrote checks against this account for deposit in the escrow account at Republic. These funds were not segregated in any way and it may well have been that the funds were spent by Carlton in the ordinary course of business.

On May 29, 1972, weeks before the cut-off date, Rega unilaterally decided to stop soliciting purchases at the .10¢ offering price on the pretext that sales had peaked and the issue had become "stale". Apparently by this time Rega had decided that it would be sufficient to comply with the conditions of the offering if the indications of interest it had received combined with the indications received by the Stevens Jackson group totalled over 3,000,000 shares. Once this number of indications had been reached, efforts to sell the original issue by both underwriters ceased. By this time Carlton had received indications for 2,760,000 shares of Dennison stock and Stevens Jackson was claiming 350,000 indications for a total of 3,110,000 shares sold or indicated for. It should be noted that these "indications of interest" were just that and did not represent actual sales since the prospective purchasers had the right to cancel them. Therefore, it is not at all established that by May 29, 1972 even the <u>minimum</u> portion of the offering had in fact been sold. Indeed by that time there was on deposit in the escrow account at Republic only $48,970 representing the two deposits made by Carlton. Nevertheless, preparations were confidently made for a May 30, 1972 closing. For example, Coven, having been told that Carlton had sold more than the minimum portion of

the offering prepared an opinion letter dated May 30, 1972 as one of the required closing documents pursuant to ¶6.06 of the Underwriting Agreement. However, the closing was adjourned to June 5, 1972 and on that date had to be postponed again. The scheduled closings were apparently called off because there were insufficient funds in the escrow account. Another closing was scheduled for June 12, 1972.

Even before the minimum closing had actually taken place the manipulation of the Dennison stock price began. On June 1, 1972 Rega and Preston Morris--a trader specializing in over-the-counter stocks at M.S. Wien, a trading house--had a telephone conversation. Rega told Morris that the Dennison issue was about to close. On that date, Morris submitted a listing application in name only in the "pink sheets".[4/] This meant M.S. Wien would be a market-maker. However, before he traded the stock Morris wanted to be sure it had closed so he again spoke with Rega on June 2 who told him the issue had closed and was free for trading. On that basis M.S. Wien commenced making a market on trade date June 5, the day the June 2 "pink sheets" were disseminated to brokers. The market M.S. Wien was making was a regular market as opposed to a "when-issued" market. Morris' first transaction was a purchase order received from K.F.M. Securities for 37,000

shares which Morris filled at .145¢. This left M.S. Wien "short" 37,000 shares and set the market at .10 bid--.14 ask. The June 5 order from K.F.M. Securities consisted in large part of an order placed by Ross Pascall--Carlton's rssident manager of the West Caldwell office. On June 5 Pascall ordered 35,000 shares through an account in his name at K.F.M. Securities. The Pascall transaction "pegged" the market as .10¢-.14¢, a 40% premium over the new issue price.

It is also clear that Coven knew before hand that M.S. Wien was going to appear in the "pink-sheets." There was credible testimony that prior to that appearance Coven had called a trader at Stevens Jackson and indicated to him that M.S. Wien would be making a market in the sheets for Dennison and that it would appear on June 1 or 2. Subsequently when Coven was specifically "informed" that M.S. Wien was in the sheets, he blithely assumed that M.S. Wien was trading on a "when issued" basis.

Also on June 2--again before a minimum closing had taken place--salesmen of Carlton began to solicit purchases of Dennison at prices in excess of the offering price. On that date, the first day of trading, Carlton sold 120,500 shares of Dennison stock for its own account to public

customers even though, a few days earlier, Rega had concluded that the issue was "stale." Of the 120,500 shares sold, 100,000 shares were sold at .11¢ per share and 20,500 shares were sold at .13¢ per share. Between June 2 and June 20, 1972, Carlton, as principal, sold to its customers approximately 380,000 shares of Dennison stock at prices in excess of .10¢ per share.

Closing in Escrow

The minimum closing had been rescheduled for June 12, 1972. On that date there was a "gathering" of all the concerned individuals at the offices of the Republic National Bank. This "gathering" proved to be a somewhat confusing and tangled affair.

A few days prior to this "gathering"--June 9--the escrow account reflected deposits totalling $223,496.75. Coven had adopted the position that if $255,000 was in the account there could be a closing since this represented Dennison's funds and once that amount was reached the issue could close. Consonant with this position it was Coven's view that the underwriters could transmit "net funds", that is, the difference between the subscribers' funds and the underwriters' commission and expense. On June 12 Rega arrived at Republic with an uncertified check for $31,493.75 representing

its last deposit to the escrow account. This was a net check Carlton allegedly having deducted its commission in advance. In addition, on the same date, another check was presented in the amount of $7,506.25 by Stevens Jackson. Both these checks when added to the outstanding balance in the escrow account would raise the escrow account figure to $262,496.75 enough for a closing if the minimum required was $255,000. However, there was a problem in that the Rega check was uncertified. Under these circumstances, Republic refused to disburse the funds in the escrow account. Moreover, the bank wanted some assurances that the minimum number of shares had in fact been sold. It also wanted letters from the underwriters and the issuer noting the commissions deducted in advance. In light of these difficulties, Coven suggested a closing in escrow, i.e., preparation of the papers for a closing pending counting of the certificates by the bank. The "gathering" dispersed with no monies being disbursed from the escrow account and no certificates being distributed.

Pursuant to the bank's request Coven prepared a letter dated June 13, and received on June 15 by Republic indicating that 3,075,000 shares had been sold. It is not at all clear how Coven managed to reach this particular figure.

It may be that Coven assumed that the $7,506.25 check presented to the bank on June 12 by Stevens Jackson constituted payment for approximately 75,000 shares and that this amount added to the number of shares then "sold" would bring the total to 3,075,000 shares. Be that as it may, it soon appeared that Coven was in fact mistaken in his estimate of the number of shares sold.

In the meantime a letter was prepared at Carlton pursuant to Rega's instructions directing the transfer agent as to how many certificates to issue for Carlton's alleged sales. Judging from the figures submitted it would appear that Rega posited as a predicate that 3,075,000 shares were in fact sold as represented by Coven. Therefore, the number of shares to be issued at Rega's instructions added to the number of shares sold by Stevens Jackson would have to total this magic figure. By June 12, 1972 Carlton had purchases of 1,723,855 shares by customers in whose name certificates were to be registered. In addition Stevens Jackson had represented that it had sold 351,000 shares. This brought the total number of shares to 2,074,855 shares, 1,000,145 shares short of the target of 3,075,000 shares allegedly sold. To reach the goal of 3,075,000, Carlton simply instructed the transfer agent to issue 1,000,145 shares in "street name."

Republic received the certificates on June 19, 1972. The certificates were counted by the bank to make sure that at least 3 million were delivered. A count of the certificates demonstrated that the 3,075,000 share estimate was erroneous. Carlton had indicated that it was to receive 2,724,000 shares. Instead, Carlton received 2,727,000 shares. Stevens Jackson had indicated it had sold 351,000 shares. However, Stevens Jackson and its selling group received a total of 346,000 shares. The final number of shares issued totalled 3,073,500 shares, 1,500 shares less than requested by the underwriters. Nevertheless, the count of the certificates plus the letters from Stevens Jackson, Rega and Coven satisfied the bank that the minimum was sold. By June 27, 1972 all the funds in the escrow account had been disbursed by Republic and the account was closed.

The "maxi" portion of the offering was still outstanding and presumably the underwriters were supposed to use their best efforts to sell the remaining shares. But as noted both listed underwriters had stopped selling the issue as of May 29, 1972.[5/] From June 12, 1972 to June 30, 1972 Coven made no efforts whatsoever to ascertain whether the "maxi" portion of the offering was being sold. He failed to ask counsel for the underwriters how the sale of the maximum was progressing

because he thought Levin was busy with other matters and in addition he, himself, was busy with another issue. Despite the fact that he spoke with Rega on some occasions during this time he neglected to inquire as to the development of the "maxi" sale since there were more important matters to discuss. It was not until June 29, 1972 that Coven supposedly learned that Carlton was trading the issue. Shortly thereafter Coven learned from Rega that Carlton was not engaged in best efforts to sell the remaining shares. He was also told by Rega that the SEC had been making inquiries with respect to the sale of the Dennison stock. After having subsequently informed the president of Dennison that the issue had to be deregistered,[6/] arrangements were finally made to have a deregistration statement mailed to the Commission on July 17, 1972. The amendment deregistering the remaining shares of Dennison was received by the Commission on July 18, 1972.

The After-Market

Carlton had begun selling Dennison shares for its own account on June 2, 1973. During the same time it had induced M.S. Wien to appear in the "pink sheets" and fil[illegible] an order mainly brought about by Pascall, one of Carlton's resident managers. The evidence is clear that Carlton through Rega contrived to create an artificial market for the Dennison

issue. This scheme was greatly facilitated by the fact that the greater part of the Dennison certificates were in the hands of Carlton customers. A prime technique used to control the Dennison after-market was the requirement by Carlton that its salesmen maintain an "orderly market". All salesmen were told by Rega and Pascall of this firm-wide practice. This meant that if a customer sold Dennison the salesman was responsible for finding another customer to buy the shares. If a salesman did not "maintain an orderly market" and the situation became extreme, he would be reprimanded or otherwise disciplined for his failure to keep Dennison stock away from the market. In this fashion the price of the Dennison stock was never exposed to the vagaries of a free and competitive market. By June 21, 1972 Carlton--having created a demand for the stock among its customers--had sold "short" for its own account 340,750 Dennison shares or over 10% of the public offering. This meant, of course, that Carlton would eventually have to cover its short position by buying the shares from its customers or in the market. Carlton covered its short position in June and July almost entirely by purchasing shares from its customers. Only some 8,000-10,000 shares were purchased outside of Carlton in covering the firm's large short position. In July 1972 by covering its short

position and dealing with customers at prices Rega set, Carlton made a gross profit of $10,000. In the following month of August Carlton had only five transactions in Dennison stock with persons outside of Carlton. During that month, dealing almost exclusively with its own customers at prices set and maintained by Rega, Carlton showed a gross profit of $14,000.

The evidence is also clear that in manipulating the Dennison market a number of material misrepresentations and omissions were made to Carlton customers. For example, Carlton did not tell its customers that it was acting as principal in the transaction, that after June 15, 1972 Carlton was making a market in the stock of Dennison or that original issue shares remained unsold and were available at a lower price than that being quoted to such customers by Carlton. Also the firm sold as principal to customers at prices above the prevailing market price without disclosing this fact. The prices charged the customers were in excess of the price in the market and the price at which Carlton was able to buy the stock.

Again, as with the sale of the original issue, defendants Levine, Colloff, Corvino and Weinberg participated in the after-market sales without giving any thought to the interests of their customers. They recommended and

sold the stock to their customers without disclosing that Carlton was making a market in Dennison and was selling on a principal basis and without making any effort to obtain the stock at the lowest possible price for their customers.

Christian-Paine

By late June 1972 Rega was aware that the Commission had begun a general inquiry into the Dennison offering. In September 1972 Rega set in operation his plan to disassociate himself from Carlton and bring into being Christian-Paine. As a first step, on September 15, 1972, he purchased all of the issued and outstanding stock of Continental Planning Corporation, an inactive New York broker-dealer. On October 13, 1972 a Restated Certificate of Incorporation of Contin ntal was filed with the Secretary of State of the State of New York pursuant to which that corporation's name was changed to "Christian-Paine & Co., Inc.". Subsequent to the purchase of the Continental stock and the filing of the Restated Certificate of Incorporation, Rega redeemed all of his voting stock in Carlton-Cambrige and resigned as president of Carlton, leaving Carlton's cashier--Santorriello--as the sole registered principal and president of Carlton. At this time Santorriello had no intention of running Carlton as a retail operation. For the redemption of the stock

Rega received $150,000 based upon his original investment in the company. Then on November 15, 1972 an agreement was entered into between Christian-Paine and Carlton under which Christian-Paine purchased some of the assets of Carlton--including all of the Carlton customer accounts' names and addresses. At a meeting of all the registered representatives, Pascal stated that Christian was taking over all of the desirable assets of Carlton. Not knowing what was going to happen to Carlton, the salesmen all transferred to Christian. Christian arranged to conduct its business from the same premises previously used by Carlton. So that the salesmen left Carlton one day and returned to their offices the following business day to work as salesmen for Christian with their responsibilities remaining the same at Christian as they were at Carlton.

Instructions were given to the registered representatives to transfer their accounts to Christian and to dispose of everything that had the name Carlton. The current balance in the account of each customer was recorded in the new records set up for Christian but no dates prior to the establishment of the new company were reflected. The old customer books were put in storage[7/] and no records showing the name of Carlton were left in the office.

A letter was sent to all customers of Carlton informing them that Christian-Paine had acquired certain assets of Carlton, as well as customer accounts, branch offices records and employees. The letter stated that Christian intended to provide "continuity of services" and asked the customer, "in order to have the acquisition as complete as possible," to sign an authorization to transfer the account to Christian. The end result was that the overwhelming majority of Carlton customers switched over to Christian.

Following this transfer of assets Carlton was left with no branch offices and only one employee, and its securities business was limited to some 10 or 20 transactions per month.

An analysis of the available documentary evidence concerning the financial condition of Carlton before and after the transfer discloses that as of October 31, 1972 Carlton had current assets of $1,347,227, and current liabilities of $389,904. Other liabilities amounted to $661,161. Under the terms of the Carlton-Christian agreement, Christian purchased $671,393 of the current assets and assumed $371,890 of the current liabilities and $310,250 of the "other liabilities." Thus immediately after the agreement

was consummated the financial picture was as follows:

	Carlton (10/31/72)	Christian	Carlton Remainder
Current Assets	1,347,224	671,393	675,831
Current Liabilities	389,904	371,890	18,104
Other Liabilities	661,161	310,250	350,911

By December 31, 1972, Carlton's listed assets had dipped to $140,163.70 reflecting a decrease over a period of approximately 1 1/2 months of $535,667.20. By that time also Carlton had no liabilities. So that it would appear that within a period of two months Carlton which purportedly once was one of the largest over-the-counter firms on the East Coast was reduced to a firm with minimal assets, one employee (who was in fact working for Christian), and 1? or 20 transactions per month.

Manipulation By Rega At Christian-Paine

By the late fall of 1972 Rega, now at Christian, instructed his former Carlton salesmen to commence purchasing Dennison from their customers at .12¢ per share. Rega set the market at .12 bid--.15 ask during the period of January to May 1973. The sales campaign initiated by Rega resulted in Christian having by May 1, 1973 an inventory position of 472,115 shares long valued at the acquisition

price of .12¢ per share.. In the latter part of May the price of Dennison began to rise and by the end of May the price ranged between .17 bid and .20 ask. In early June, Rega prepared an "informational report" on Dennison which was distributed to the salesmen for mailing to customers. This informational report recommended that customers buy Dennison but did not disclose that Christian would be selling out its large inventory position acquired at prices favorable to the firm. In addition, the salesmen at Christian apparently embarked on an intensive sales campaign. The evidence at the trial revealed that most of the sales to customers during June of 1973 were solicited transactions.

During the month of June the price at which Christian through Rega was selling Dennison to its customers rose markedly. On June 12, 1973 Christian was selling Dennison to its customers at .22 bid - .25 ask per share. On the next day the price had risen to .375 bid -- .50 ask per share. By June 15, 1973 the price had gone up to .75¢ ask. This was the prevailing price charged until July 5, 1973. During the same period the market price as quoted in the "pink sheets" for Dennison was significantly lower than the price Christian was charging its customers in principal transactions. In fact during this period, the Christian trading account was

able to purchase Dennison stock from other brokers in inter-dealer transactions at prices well below the prices Christian charged its customers. For example, from June 15 to June 22, 1973 while Christian was charging .75¢ for Dennison it was able to purchase it from other brokers at prices ranging from a low of .25¢ to a high of .50¢. At the same time the highest market "ask price" in the "pink sheets" ranged from .50¢ to .625¢. No explanation was given during the trial for such disparate prices nor was any credible explanation given as to reasons why Christian customers were being charged .75¢ per share. In fact there was no justification in the operations of Dennison for the large price increase.

In addition, during the period of May 25 to July 1973, Christian engaged in a great volume of cross-trading between its customers with the firm dealing as principal with each customer and with a large mark-up between purchases from customers and subsequent sales to others. From June 8 to June 11, the firm mark-up on these cross-trades was 25%. During the period from June 12 to June 14 as the price fluctuated upward on the buy and sell side, the mark-up averaged between 20% and 40%. From June 15 to July 5 the firm trading account extracted a mark-up of 20%.

During this period the four salesmen--though they had not done any research into Dennison and therefore knew little if anything of the company's affairs which would serve to give some basis to their recommendations to their customers with respect to the Dennison stock--closely followed Rega's lead. Thus when Rega having set the bid price at .12¢ decided to start acquiring a long inventory position in Dennison, the salesmen followed suit. Levine, for example, purchased 33,000 shares from his customers at .12¢ per share during the months of February, March, April and up to May 25, 1973. During the same period Colloff bought 4,000 shares at the same price. Corvino was doing likewise and Weinberg managed to buy 7,000 shares at .12¢.

When Rega decided to "unload" the shares and engaged in cross-trading between customers at excessive mark-ups, the salesmen--again ignoring their customers' interests--proceeded to effectuate the plan. Thus, during the period from May 25, to July 5, 1973--customers of Levine purchased 60,142 shares at prices ranging from .18¢ per share on May 25 to .75¢ per share from June 8 to July 5. At the same time Levine was purchasing from his customers 67,800 shares at prices ranging from .16¢ per share on June 1 to .625¢ from June 11 to July 5. In the meantime,

early in June, Colloff had received some inkling that Rega was going to raise the price of Dennison without any justification. As a matter of fact he was under the impression that Rega was going to "boost" the price of Dennison to $1.00 per share. Colloff had no information justifying such an increase. Nevertheless, he proceeded to solicit purchases on the "technical" basis that the price was going up. During the period from June 1 to July 5, 1973 Colloff sold to his customers 27,400 shares at prices ranging from .20¢ per share on June 1 to .75¢ per share from June 8 to July 5. During the same period he bought 20,500 shares from his customers in principal transactions at prices ranging from .375¢ on June 6 to .625¢ from June 8 to July 5. Corvino, for his part, during the period from May 22 to July 5, 1973 sold 36,500 shares to his customers and purchased from his customers 21,500 shares. Finally, Weinberg sold 19,600 shares from May 22 to July 5, 1973. During the same period Weinberg bought 24,900 shares from his customers at prices ranging from .16¢ per share on June 5 to .625¢ from June 8 to June 12.

On May 1, 1973 Christian's balance forward (inventory) position was just over 472,000 Dennison shares. As a result of the extensive trading of the stock beginning

in late May and throughout June, Christian's balance forward position on July 1, 1973 was 51,000 shares indicating that in May and June 1973 Christian sold at least 420,000 shares out of inventory to customers in principal transactions. As a result, in June 1973 Christian showed a gross profit of $94,341.48.

The Court makes the following conclusions with respect to each defendant.

1. Rega and Carlton

It is clear that Rega and Carlton were responsible for numerous violations of the anti-fraud and anti-manipulative provisions of the federal securities laws. From the very beginning of this Dennison public offering Rega and Carlton embarked on a course of conduct designed to frustrate the goals of the Dennison offering and to use tradings in the Dennison issues for their own financial gain. The evidence establishes that Carlton through Rega as one of the named underwriters of the issue had no intention whatsoever to engage in "best efforts" to sell the entire issue. Rega admits that he stopped selling Dennison on May 29, 1972 even though he knew that Carlton was under a responsibility to continue to sell Dennison. This constituted a fraud upon the issuer and the purchasers of the stock in violation of

section 17(a) of the Securities Act (15 U.S.C. 77q(a)) and section 10(b) of the Exchange Act (15 U.S.C. 78j(b)) and Rule 10b-5 thereunder. In addition, Carlton was obligated to promptly deposit all the funds that it received from subscribers into the escrow account. (17 C.F.R. 240.15c2-4). The conclusion is inescapable that Rega and Carlton completely disregarded this rule and deposited subscriber funds in a business checking account and commingled these funds with ordinary revenue. Rega and Carlton even failed to comply with basic statutory mandates regulating the distribution of securities. There was testimony at the hearing that a number of subscribers to the Dennison issue did not receive a prospectus. This clearly violated §5(b)(2) of the Securities Act. (15 U.S.C. §7/e(b)(2)). A more curcial violation of the securities law occurred in relation to the representation that the offering was being made on an "all or none" basis. Rule 10b-9 of the Commission provides in part:

> "It shall constitute a 'manipulative or deceptive device or contrivance,' . . . to make any representation . . . (1) To the effect that the security is being offered or sold on an "all or none" basis, unless the security is part of an offering or distribution being made on the condition that all or a specified amount of the consideration paid for

> such security will be promptly refunded to the purchaser unless (i) all of the securities are sold at a specified price within a specified time, and (ii) the total amount due to the seller is received by him by a specified date." (17 CFR 240.10b-9.)

The terms of the Dennison offering provided that 3,000,000 shares were being sold on an "all or none" basis. If 3,000,000 shares were not sold within the specified time, then, the funds had to be returned to the subscribers. Thus, it was of the utmost importance that these shares be sold. There was no convincing evidence that the required number of shares were in fact sold. The escrow account never contained a balance reflecting the sale of 3,000,000 shares. The continuously postponed closing was another indication that something was amiss. Evidence which would have helped persuasively to establish whether 3,000,000 shares were sold would have been the Carlton books and records. However, these books and records were allegedly conveniently destroyed in a "flood."

The Court finds that 3,000,000 shares were not sold and that Rega and Carlton contrived figures calculated to give the appearance that the minimum portion of the issue had been sold. With respect to this, the Court concludes that representing that the offering would be on an "all or

none" basis violated Rule 10b-9, as well as §10(b) of the 1934 Act. SEC v. Manor Nursing Centers, Inc., 458 F.2d 1082, 1095 (2d Cir. 1972).

The Court also finds that the failure to amend the prospectus to reflect the facts that (1) the issue would not be sold on an "all or none basis"; (2) best efforts would not be made to sell the entire issue; and (3) all monies received from the subscribers would not be deposited in the escrow account at Republic constituted violations of section 5(b)(2) of the Securities Act. (15 U.S.C. 77e(b)(2)). See Manor, supra, at 1098-1100.

Rega and Carlton also disregarded the provisions of Rule 10b-6. (17 C.F.R. 10b-6). That rule, in pertinent part, provides that it is a manipulative or deceptive device for "any person who is an underwriter in a particular distribution of securities" or "a broker, dealer, or other person who has agreed to participate or is participating in such distribution," to bid for or purchase such securities until he has completed his participation in the distribution.

A public offering of stock pursuant to a registration statement would clearly constitute a distribution within the meaning of Rule 10b-6. The public offering of the Dennison stock began on April 26, 1972 and continued until July 18, 1972

when the remaining stock was de-registered. Yet during this period--while Carlton was still purportedly acting as Dennison's underwriter--Rega induced M.S. Wien to submit a bid into the pink sheets. This action violated Rule 10b-6. SEC v. Scott Taylor & Co., Inc., 183 F.Supp. 904, 907-08 (S.D.N.Y. 1959). Also during this time Carlton was trading Dennison both with its own customers and with other brokers. This similarly constituted a violation of Rule 10b-6.

Most of the foregoing violations merely set the stage for the manipulative scheme involving the price of Dennison which followed.

Section 9(a)(2) of the Exchange Act (15 U.S.C. §78i(a)(2)) makes it unlawful to use the facility of any national securities exchange "[t]o effect, alone or with one more other persons, a series of transactions in any security registered on a national securities exchange creating actual or apparent active trading in such security or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others."

It has been held that the practices prohibited by this section with respect to listed securities are also

violations of §17(a) of the Securities Act and section 10(b) of the Exchange Act with respect to an over-the-counter security. SEC v. Resch-Cassin & Co., Inc., 362 F.Supp. 964, 975 (S.D.N.Y. 1973). Some of the indicia of price manipulation of an over-the-counter security include price leadership by the manipulator and his dominion and control of the market for the security. Resch-Cassin, supra, at 976. The evidence of such a manipulative scheme with respect to Dennison is clear.

As indicated Rega caused M.S. Wien to make a market in Dennison and on June 5, 1972 M.S. Wien appeared in the "pink sheets." On June 15, Carlton began placing quotes in the "pink sheets." From June 15 to 20, Carlton quoted the highest bid-ask prices yet did not purchase a share of stock from another broker. On June 20 Carlton raised its market to .14 bid--.17 ask and maintained that market until the end of October. Again during this period Carlton's purchases from other brokers were insignificant. There is no question that during the period from June to October 1972 Rega and Carlton controlled the market in Dennison. This domination was greatly facilitated by the fact that a substantial percentage of the Dennison issue--allegedly 2,727,000 shares of 3,073,500 shares

issued--were in the hands of Carlton's customers. These customers sold to and purchased Dennison from Carlton at prices set by Rega. Given Carlton's total dominance of the market the scheme worked quite effectively. Carlton initially sold "short" to its customers and purchased the shares again from its customers at lower prices to cover its short position. Also Carlton just cross-traded customers sell and buy orders resulting, of course, in a nice profit for the firm. As a result of all this Carlton was a market unto itself making it appear that in fact there was an independent and free market in Dennison rather than the contrived artificial market which in fact it was.

As we have seen, in the fall of 1972 Rega, now at Christian, prepared to embark on yet another manipulative scheme involving Dennison stock which would prove to be even more profitable. Again--given the complete control of the market--the plan worked quite effectively. In January, February, March, April, and May of 1973 a substantial block of Dennison stock was purchased from Christian-Paine's customers at .12¢ per share. By the end of May, Rega began to "boost" the price of the stock until by mid-June the stock was being sold at .75¢ per share. During the period of May 25, 1973 to July 5, 1973 hundreds of thousands of shares

were cross-traded in Christian at prices arbitrarily set by Rega. During this period the prices charged by Christian for Dennison were far higher than the prices in the "pink sheets" and the prices that other brokers charged Christian for the stock. In short, it is evident that Rega and Carlton beginning in June 1972--and Rega while at Christian-Paine--created an artificial market in Dennison and manipulated the price of the stock within the meaning of §9(a)(2) of the Exchange Act and thus contravened §10b of that Act and Rule 10b5 thereunder and §17(a) of the Securities Act.

During the course of both schemes numerous additional violations of section 17(a) of the Securities Act and §10b of the Exchange Act were committed vis-a-vis the customers. Little need be said about these except to note a few. The artificial prices set and the sales at excessive mark-ups without disclosing the true market price were violations of the securities laws. Charles Hughes & Co. v. SEC, 139 F.2d 434 (2d Cir. 1943). Also incomplete confirmations were sent to customers in violation of §15(c) of the Exchange Act and Rule 15c 1-4 thereunder. In contravention of this rule these confirmations (copies of which were received in evidence during the trial) failed to disclose that the firm was acting as principal. (17 C.F.R. 240.15c14.)

Finally, the "informational" letter prepared by Rega and distributed to the Christian customers clearly violated §17(a) of the Securities Act and §10(b) of the Exchange Act and Rule 10b5 thereunder. For example, this letter encouraging the Christian customers to purchase Dennison did not reveal the firm's retail interest in Dennison nor that Christian would be selling out its large inventory position acquired at prices favorable to it.

2. Coven

Defendant Coven has been charged with having "aided and abetted" the violations by Rega and Carlton.

In Securities and Exchange Commission v. Spectrum, Ltd., 489 F.2d 535, 541 (2d Cir. 1973) the Second Circuit explicitly indicated that in measuring liability as an aider and abettor a negligence standard should be employed. The test, therefore, is whether the "defendant should have been able to conclude that his act was likely to be used in furtherance of illegal activity." SEC v. Management Dynamics, Inc., Slip Opinion at 2349, Docket Nos. 74-1680; 74-1686; 74-2148; 74-1842 (2d Cir. March 18, 1975). Knowledge that a violation is being committed and intent to further the illegal act is not required. SEC v. Spectrum, supra. It is sufficient if the defendant had reason to know or should have

known that an illegal scheme was afoot and that his conduct would contribute to its success. See SEC v. National Bankers Life Ins. Co., 324 F.Supp. 189, 195 (N.D. Texas 1971). Under these principles, the Court finds that Coven aided and abetted Rega's and Carlton's violations in several respects.

A crucial element to Rega's scheme was to make it appear that the minimum had in fact been sold. Without this, there could be no closing of the escrow account and the funds had to be returned to the subscribers. If the escrow account had reflected deposits amounting to at least $300,000, this would have been some evidence that in fact the minimum had been sold. But the escrow account deposits at no time totalled this sum. This should have been some indication that something was amiss. Yet, Coven took the position that it would be enough to close if sufficient funds were available to pay off the issuer. In his view Rega could deposit his checks "net" having deducted his commission and expenses. Coven's understanding attitude and his lack of concern in establishing that the minimum had been sold was very helpful to Rega. However, Coven's assistance did not stop there. In response to the inquiries by Republic, he represented that 3,075,000 shares had been sold. Coven had no basis whatsoever to make this representation and in fact his figures were erroneous

at that. The fact that counsel for the issuer was so categorical in his assertion that more than the minimum had been sold went far to persuade the bank that the terms of the escrow agreement had been met. Coven's protestations that his letter was "conditional" on the bank counting the certificates are not persuasive. First, the bank had explicitly requested a written statement from Coven that the minimum had been sold and this is exactly what it received. There is no indication whatsoever on the face of the letter that it was meant to be "conditional." Secondly, if the letter was meant to be "conditional" this would mean that it would be solely the bank's responsibility to determine if the minimum had been sold. In fact, what Coven would be telling the bank is that he thought the minimum had been sold but that he was not sure and that therefore Republic should check to ascertain how many shares had allegedly been sold. Clearly, this is not what the bank had requested.

Subsequently, Coven learned that his statement that 3,075,000 shares had been sold was incorrect in light of the fact that the transfer agent had remitted 3,073,500 shares. Apparently he was informed of this discrepancy by the bank but Coven just concluded that there had been

an "erroneous arithmetical computation". He totally failed to make any inquiries to find out exactly how many shares had in fact been sold. In sum, Coven's cavalier attitude greatly assisted in furtherance of the scheme.

Following the June 12, 1972 "gathering" at the bank, Coven's negligence became more pronounced. He knew that the underwriters were supposed to use best efforts to sell the remaining shares. Yet, admittedly he made no attempt to inquire from Levin, the attorney for the underwriters, whether Carlton and Stevens-Jackson were continuing to sell the Dennison issue. He assertedly was busy with another matter and therefore could not make the necessary telephone call. Moreover, even though he was in touch with Rega after the June 12 gathering, the Dennison issue never came up since there were more important matters to discuss. It is most difficult to understand why Coven who, according to his testimony, frequently called Levin and the underwriters to learn how the sale of the minimum was progressing suddenly lost interest in the issue and became too busy or concerned with more important matters. Coven's inaction and total disinterest in learning whether the underwriters were attempting to sell the maximum portion of the Dennison issue contributed to the violations by Rega and Carlton with respect to the

failure to make "best efforts" to sell the issue.

Coven also aided and abetted Rega and Carlton in violating Rule 10b-6. It appears that Coven had some knowledge beforehand that M.S. Wien was to appear in the "pink sheets" making a market in the Dennison stock. Further, this matter was specifically brought to his attention on two different occasions. He did not make the slightest effort to look into the circumstances surrounding M.S. Wien's market. Had he done so presumably he would have been informed that Rega had told M.S. Wien that the Dennison offering had ended and that it was proper to trade the stock. Instead, Coven just assumed that M.S. Wien was trading on a "when issued" basis. Coven's indifferent attitude and his failure to exercise minimum due diligence in this regard facilitated Carlton and Rega's violations of Rule 10b-6.

The Commission has alleged that Coven aided and abetted in other violations such as the purportedly false representation that Stevens-Jackson would act as an underwriter when in fact this firm appeared only as an accommodation to Coven; the commingling of subscriber funds by Carlton and the sale of the stock unaccompanied by a proper prospectus.

With respect to the commingling of funds and the failure to deliver the prospectus, there is little, if any,

evidence to connect Coven with these matters. As far as Stevens Jackson appearing as an underwriter as an accommodation to Coven is concerned, the hard fact is that Stevens Jackson did manage to sell 80,000 shares of Dennison. Also a selling group did materialize and did sell some of the shares. These facts belie the charge that Stevens Jackson was only a nominal underwriter and had no intention of making any efforts whatsoever to sell the Dennison issue.

3. Republic

Republic National Bank has been charged with violating the securities laws by disbursing the escrow funds without evidence that the minimum had been sold. The bank was alerted to the fact that something was irregular since the escrow account did not reflect $300,000 evidencing the sale of the minimum. In light of this the bank asked for and received verbal and written assurances that the minimum had been sold. The bank had no reason to suspect that some of these assurances were less than candid. In addition, the bank had been informed that the underwriters were allowed to remit subscribers' funds "net". Finally, the bank undertook to count the certificates being issued before it allowed the escrow funds to be disbursed. While it is true that in retrospect it can be determined that such

a count proved nothing since the figures submitted to the transfer agent by Rega were in part contrived, Republic at the time in question had no knowledge or any reason to suspect that such was the case.

The bank has also been charged with aiding and abetting Carlton's commingling of subscriber funds. However, the evidence fails to disclose that the bank knew or had reason to know that such was the case. Therefore the Court finds that Republic neither violated nor aided and abetted any violations of the securities laws.

4. The Salesmen

Levine, Colloff, Corvino and Weinberg have been charged with engaging in a fraudulent sales campaign both during the original offer and the after market.

The evidence establishes that in selling the original issue these four salesmen knowingly made false and misleading statements. They "touted" the stock and used price projections to induce purchases of the stock. Such a practice is fraudulent absent a reasonable basis for the price prediction. Berko v. SEC, 316 F.2d 137, 143 (2d Cir. 1963). The salesmen failed to advise the customers of the high risk elements inherent in the investment and did not inform them of the financial

condition of the company and its need for working capital. This constituted a failure to state material facts. During the after-market sale the salesmen failed to disclose to their customers that the firm, while making a market in Dennison and acting as principal, was charging them prices much higher than the market price. This constituted a failure to disclose material facts within the meaning of section 17(a) of the Securities Act and section 10(b) of the Exchange Act and rule 10b-5 thereunder. See Chasins v. Smith, Barney & Co., Inc., 438 F.2d 1167 (2d Cir. 1970); Charles Hughes & Co. v. SEC, 139 F.2d 434, 437 (2d Cir.), cert. denied, 321 U.S. 786 (1943).

In addition, the salesmen all violated their responsibilities to customers by failing to investigate Dennison. A salesman is required to know the security he is recommending. Hanly v. SEC, 415 F.2d 589, 597 (2d Cir. 1969). Each of the named defendant salesmen admits he never did fundamental research into Dennison. Nevertheless, from June to September 1972 and May to July 5, 1973 they recommended the stock to their customers. This recommendation without adequate research constituted a violation of the anti-fraud provisions of the acts. Hanly, supra.

The evidence also supports the finding that the salesmen aided and abetted the scheme to manipulate the Dennison stock particularly during the May-July 1973 period when the price of the stock zoomed to .75¢ for no apparent valid reason. Given the rapid price rise, the salesmen should have known that something was amiss. In this respect, the Court notes that Colloff had some concrete basis--other than the price rise--to suspect that trading in Dennison was being manipulated since he was aware of Rega's plan to "boost" the price of the stock.

5. Pascall

Defendant Pascall has been charged with aiding and abetting the fraudulent manipulation. There is no question that Pascall by his order to buy 35,000 shares of Dennison which was filled by M.S. Wien on June 5, 1972 thereby establishing a market on the stock aided and abetted the violation by Rega and Carlton of Rule 10b 6 and the manipulation of the after-market in violation of §10b of the Exchange Act. Moreover, Pascall, as the resident manager of the West Caldwell branch of Carlton, had direct responsibility for supervising the registered representatives at that branch. To the extent that he neglected his supervisory duties by failing to ensure that the salesmen conducted

the sales campaign in a proper fashion he aided and abetted the fraudulent conduct in which such salesmen engaged. See SEC v. Charles A. Morris & Associates, Inc., CCH Fed. Sec. L. Rep. [1972-1973 Transfer Binder] ¶93,756 at 93,307 (W.D. Tenn. 1973).

6. Christian-Paine

The Commission has chosen to file its complaint against Christian-Paine on the theory that Christian was Carlton's "successor". Christian has not been charged with any substative violations.

Generally the term "successor" applies to corporations wherein one corporation by process of amalgamation, consolidation or legal succession becomes vested in rights and assumes burdens of its predecessor corporation. Forest Laboratories, Inc. v. Pillsbury Co., 452 F.2d 621, 625 (7th Cir. 1971). Moreover, one corporation may be deemed to be the "successor" of another where the circumstances attending the creation of a new corporation show that it was formed to carry on the business of the old corporation and that, in reality, it is a mere continuation of the old corporation. See SEC v. Manor Nursing Centers, Inc., 340 F.Supp. 913, 920 (S.D.N.Y. 1971), aff'd, 458 F.2d 1082, 1094 (2d Cir. 1972). Applying these principles here, and upon the facts

set forth hereinabove, the Court finds that Christian was in fact the mere continuation of Carlton and that as such it was Carlton's "successor".

While it is true that the agreement entered into between Carlton and Christian did not on its face provide for a total takeover of all of Carlton's assets and liabilities, subsequent events demonstrate that the parties really intended that Christian would assume Carlton's operations. Thus, by December of 1972 Carlton was for all practical purposes an inactive corporation. The premises it had once occupied were being used by Christian; its former employees now worked for Christian; its customers were switched to Christian and its books and records had been disposed of. It was left with one nominal employee who apparently had no expertise in the trading of stocks and who in fact worked for Christian. In sum, what was once Carlton's business simply became Christian's business. Given all this, the Court finds that Christian was Carlton's "successor".

Injunctive Relief

In deciding whether to issue a permanent injunction in suits of this type the critical area of inquiry is whether "there is a reasonable likelihood that the wrong will be repeated." SEC v. Manor Nursing Centers, Inc.,

458 F.2d 1082, 1100 (2d Cir. 1972). Moreover "past illegal conduct is highly suggestive of the likelihood of future violations." SEC v. Management Dynamics, Inc., Slip Op., supra, at 2340 (2d Cir. March 18, 1975), and the burden is on the defendants to furnish to the Court some basis for believing that their illegal activities will not be repeated.

With these principles in mind and based on the facts adduced at the trial, the Court finds that there is a reasonable expectation that the defendants who have been found to have violated the securities laws will continue to engage in similar violations. Christian will also be enjoined since it is really Carlton under another name. Accordingly, in order to protect the investing public, a permanent injunction shall issue enjoining any such future violations with respect to any security.

Submit order on 2 days notice.

Dated: New York, New York
June 30, 1975

LAWRENCE W. PIERCE
U. S. D. J.

FOOTNOTES

1 In a somewhat conclusory fashion Republic National Bank has challenged the Court's jurisdiction. The Court finds these arguments without merit.

2. Prior to the trial of this action Levin consented to the entry of a Permanent Injunction by Consent.

3. The original selling period was to be 60 business days commencing on April 26, 1972. This period could have been extended for an additional 30 business days upon the consent of the issuer and the underwriter.

4. Every business day the National Quotation Bureau publishes in its 'pink sheets" the wholesale prices on a number of over-the-counter stocks and bonds. These are the prices at which dealers are willing to buy or sell various securities in trades between dealers.

5. One of the members of the Stevens Jackson selling group did not actually stop selling the original issue until on or about June 20 or 21, 1972.

6. Coven did not inform Dennison's president that Carlton had been trading the issue.

7. All the old records were transferred to a basement in Lodi, New Jersey, and subsequently destroyed after they were allegedly damaged in a "flood".

8-18

OPINION ON REGONSIDERATION
APPLICATION

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

100a

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-v- 73 Civil 2944

JOSEPH REGA, JR., et al.,

Defendants.

APPEARANCES:

SECURITIES AND EXCHANGE COMMISSION
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LAWRENCE W. PIERCE, D.J.

MEMORANDUM OPINION

In an Opinion dated June 30, 1975 this Court found that the defendant Bernard J. Coven had aided and abetted the commission of various violations of the securities laws. Coven

has moved for reconsideration pursuant to Rule 52(b) of the Fed. R. of Civ. P.

A. Closing in Escrow

Coven contends that, contrary to this Court's findings, the minimum portion of the Dennison issue was in fact sold.[1/] In support of this, Coven relies upon evidence that the issuer received from the escrow account $ 3,814.25 in excess of what it would have been entitled to ($ 255,000) if only the minimum number of shares (3,000,000) had been sold. It is true that this, considered apart and of itself, would ordinarily tend to show that the minimum was sold. However, this factor should not be considered in a vacuum and without due regard to all the attendant circumstances surrounding the closing of the minimum. Thus, given the facts that the escrow account never reflected sufficient funds to evidence the sale of the minimum, that the Carlton records which would conclusively establish how many shares of the issue it had sold were mysteriously destroyed, and that the figures submitted by Rega to the transfer agent were contrived, it is difficult to conclude that the minimum was sold.

As another indication that the minimum was sold Coven argues that with the exception of its last check Carlton had deposited gross funds in the escrow account and that the difference between its last check and the gross funds was completely

covered by the funds in its account at the Commercial Trust Co. of New Jersey. Apart from the fact that there is no evidence to support the conclusion that all but one of the deposits made by Carlton represented gross funds (see Plaintiff's Exh. 16 & 17) this contention ignores the hard fact that the Commercial Trust Account did not represent solely funds received by Carlton as payment for the Dennison original issue but also included income received by Carlton from other sources. Therefore it is not possible to ascertain which of these monies, if any, reflected funds received for the Dennison issue. 102a

The Court has rested its finding that the minimum was not sold[2/] in part on the obvious fact that the escrow account never contained $ 300,000. With respect to this Coven has again pressed his point that there was no requirement in the Escrow or Underwriting Agreements that the total gross amounts of the proceeds be placed in the escrow account in the event that 3,000,000 shares were sold. In this Court's view this argument is based on a strained reading of these documents. For example, Coven points to section 3.01(b) of the Underwriting Agreement which provided that "until said 3,000,000 shares of stock are sold, the Underwriters shall deposit all funds received with . . . Republic . . ." (emphasis his). Apparently in Coven's view this clause supports his contention that the escrow account did

not need to reflect funds evidencing the sale of the minimum portion of the issue. How this is so is not made entirely clear. This provision simply states that the underwriters were under an obligation to deposit all the funds received into the escrow account and this obligation would continue until the minimum portion of the offering was sold. Obviously once this event occurred no other funds evidencing sales of the minimum number of shares would be forthcoming.

Coven's argument premised on the Escrow Agreement is of a similar nature and overlooks the fact that section 2(d) of that Agreement clearly envisioned that $ 300,000 would be deposited in the escrow account. Thus that section read: "In the event that there shall not be $ 300,000 in the Escrow Account on the Delivery Date, . . . all of the monies in the Escrow Account shall be refunded in full . . . ." This section, therefore, presupposes that the Escrow Account would contain $ 300,000 once the minimum was sold.

Coven also disputes this Court's finding that he took the position that if the escrow account reflected $ 255,000 (the monies due to the issuer) then there could be a closing. In his view his opinion was the result of "a studied consideration of all of the relevant documents together with appropriate

consultations." (Memorandum at 3). However, as Coven's own testimony demonstrates, this "studied consideration" was highly colored by Coven's preconception that all that was essential was for the escrow account to have sufficient funds to pay the issuer. Thus, he testified as follows:

> Q. How did you determine that with the various commissions and deductions, there was $ 300,000?
>
> A. I spoke to the underwriters, the escrow account -- the company had to get $ 255,000 to make that issue effective. That is what I kept my eye on. I wanted - - I believe that was the amount - - $ 250,000. There was more than $ 250,000 in that account. That money belonged to my client. That is what the prospectus said, when three million shares were sold, $ 255,000 belonged to my client and that is what I was there to collect. (Transcript 3640-41).

Further, it appears that this "studied consideration" was premised on the assumption that "more than three million shares had been accounted for". (Transcript 3404). However, how this "accounting" was reached is not clear since apparently none of the participants of the June 12 "gathering" had any precise idea as to how many shares had been sold. Finally, the Court must note that the atmosphere during this "gathering" -- there was testimony that there was bickering, charges and counter charges and even threats of physical force -- was hardly conducive to a "studied consideration".

Coven has also challenged the Court's findings with respect to his June 13, 1972 letter to Republic. First, he attempts to explain how he reached the figure of 3,075,000 shares sold and again denies that the check deposited by Stevens on June 12, 1972 for $ 7,506.25 had any connection with his representation of the number of shares sold. In this respect he argues that there were no original issue shares sold past May 30, 1972 and, therefore, the Stevens check represented shares included in the amount given to Coven as the number of shares sold by Stevens.

Coven's current explanation as to how he reached the 3,075,000 figure differs markedly from his testimony at trial. Now he states that he arrived at this figure by simply adding the number of shares which Stevens represented in its June 13, 1972 letter to Republic as having been sold (351,000 shares) to the number of shares Carlton had represented that it had sold. (2,724,000 shares).[3/] While it is true that at trial Coven testified that he had been told that Stevens had sold 351,000 shares (Transcript 3393) the record does not reflect that he was told by anyone prior to June 13, 1972 the exact number of shares that Carlton had sold. Indeed, his testimony in this regard is quite imprecise. He testified

that he was informed Levin that Carlton "had done more than the minimum" but did not ask how much more than the minimum. (Transcript 3500). Later, he again testified in the same vein. (Transcript 3578-80). At another point he stated that his figure was based on information received from Stevens and Carlton. (Transcript 3415-16).

Coven's argument that the $ 7,506.25 check had to represent shares sold on or before May 30, 1972 is also contradicted by his testimony. He testified that Stevens was selling the original issue during June. (Transcript 3518-19). Moreover, it would appear that at the time of the June 12 "gathering" it was thought that the closing scheduled was for exactly the minimum. The president of the issuer was under that impression (Transcript 81) and so was Stevens' representative. (Transcript 3163). Also this would explain Coven's own concern that the escrow account reflect at least $ 255,000 -- the amount due to the issuer if the 3,000,000 shares had been sold. Thus the appearance of an additional 75,000 shares in Coven's June 13, 1972 letter to the bank could be accounted for by inferring that Coven took the $ 7,506.25 check to represent the sale of an additional 75,000 shares. The Court concludes that while Coven may have had some limited grounds for asserting that 3,000,000 shares had been sold he had no basis

whatsoever for making the categorical representation that exactly 3,075,000 shares had been sold. 107a

With respect to the June 13, 1972 letter Coven again argues that it was "conditional". The Court has rejected this contention and no additional factors have been presented which would justify changing that finding. Coven also attacks this Court's finding that Republic explicitly requested a statement from Coven that the minimum was sold. In his view the bank just wanted to determine the amount of monies due to the issuer and the underwriters. While it is true that the bank wanted to confirm what funds it was supposed to disburse, it also wanted some assurances that the minimum had been sold. This Court's finding in this respect was in part grounded on Coven's own testimony. Thus, he testified as follows:

> Q. Sir, prior to adjourning at the bank, the Republic National Bank, did Republic request any letter to be sent to them by either yourself or Mr. Ziffer?
>
> A. Not by Ziffer. They requested a letter from me.
>
> Q. What was the purpose of the letter that they requested from you, if you recall?
>
> A. They wanted to confirm, basically, for their records in some official way the number of shares sold and the shares issued fully paid and as to how the funds were to be distributed. (Transcript 3411).

Having testified in that fashion Coven now argues that the "record is absent of any proof as to what if any extent the Bank relied on [his] letter . . . ." (Reply Memo at 5, emphasis his). As Coven would have it, the bank did not rely on the letter (which as Coven himself testified it had specifically requested "to confirm . . . in some official way the number of shares sold") simply because it took the added precaution of counting the number of shares. Not only does this argument run contrary to a realistic interpretation of the sequence of events at the June 12 "gathering" but again the record shows that there is no basis for such sweeping statements. Thus a bank official testified as follows:

> Q. Mr. Dallal, did Republic National Bank to your knowledge other than the counting of the certificates actually issued, take any steps to ascertain if the certificates were, in fact, sold?
>
> **********
>
> A. After discussion with our house counsel we deemed it satisfactory that the letter from the issuer's counsel plus the two statements of accounting from the underwriters plus the counting of the certificates was adequate. (Transcript 948-49).

Coven also questions this Court's statement that in arriving at his figures "Rega posited as a predicate that 3,075,000 shares were in fact sold as represented by Coven." In Coven's view this is pure conjecture. As the Court made

clear in its Opinion based its statement on the figures submitted by Rega to the transfer agent. It cannot be contradicted that these figures when added to the number of shares Stevens claimed to have sold totalled 3,075,000 shares - exactly the number of shares Coven had stated had been sold in his June 13, 1972 letter. Given these figures the inference is inescapable that Rega was aware of Coven's representation. Otherwise, it is difficult to explain how Rega's odd number of certificates to be issued in "street name", 1,000,145 shares, coincidentally matched the exact figure needed to total Coven's estimate of 3,075,000 shares.

B. Best Efforts Portion

Coven has argued that since Carlton had begun trading the Dennison issue on June 2, 1972 this effectively terminated the issue and Coven could do nothing to alter this situation since the failure to use "best efforts" had already occurred. Since he had no knowledge of Carlton's trading, the argument continues, Coven could not have aided and abetted Carlton's failure to use its "best efforts".

In this Court's judgment this argument misses the point. There is no question that Carlton was under an obligation to use its "best efforts" to sell the remaining portion of the Dennison issue. Coven as the drafter of the Underwriting

Agreement and the attorney for the issuer must have been aware of this obligation. Yet despite this Coven admittedly made no efforts whatsoever to ascertain whether Carlton was complying with the terms of the Underwriting Agreement. Although he was in contact with Rega during this period he failed to inquire as to the progress of the Dennison issue. His explanation that "[t]here were other problems that came up" (Transcript 3464) and that there was "something more serious" (Transcript 3504) to discuss is inadequate. Coven's lack of diligence permitted Carlton to evade its responsibility of engaging in "best efforts". His indifferent attitude and disinterest was of assistance to Carlton's violation of its continuing duty. Coven's suggestion that in order to have aided and abetted in this violation he must have had some knowledge that Carlton was trading the issue is not persuasive. The Court's finding that Coven aided and abetted this violation is keyed to Coven's total failure to make any inquiries with respect to the "maxi" portion of the offering. Had Coven made an attempt to investigate and been misled by Rega or someone else's representations this would have presented a somewhat different situation.

C. M. S. Wien and the "Distribution"

Coven has alleged that contrary to the Court's finding

the "distribution" of the Dennison issue terminated on May 30, 1972 and in any event no later than June 2, 1972. The argument appears to be that since Carlton had ended its participation in the "distribution" by either of these dates neither it nor Rega could have violated Rule 10b-6 by inducing M. S. Wien to submit a bid into the pink sheets on June 2, 1972. A fortiori Coven could not have aided and abetted any such violation. 111a

Whether Carlton was participating in the "distribution" of the Dennison issue at the time M. S. Wien was persuaded to appear in the pink sheets is a question which is bottomed on essentially factual considerations. It would appear, therefore, that the Court may have set a somewhat restrictive demarcation point for the termination of the "distribution" when it intimated that the "distribution" of the Dennison issue ended on July 18, 1972 simply and solely because it was then that the stock was deregistered. The term "distribution" as used in Rule 10b-6 has been said to have a broad meaning. It has been defined as "the entire process by which in the course of a public offering the block of securities is dispersed and ultimately comes to rest in the hands of the investing public." R.A. Holman & Co. v. SEC, 366 F.2d 446, 449 (2d Cir. 1966) (citation omitted). It may also refer to an "intensive campaign" in the sale of a

security, Lawrence Rappe & Co., 40 S.E.C. 607 (1961), or to a "major selling effort" of a security. Gob Shops of America, Inc., 39 S.E.C. 92, 103 n. 25 (1959). In short, "distribution" may include "any selling activity, based upon either the magnitude of the offering or the selling efforts and selling methods utilized which constitutes a departure from casual trading." E. Weiss, Registration & Regulation of Brokers & Dealers 113 (1965). Gauged by these definitions there is no question that at the time it induced M. S. Wien to submit its bid Carlton was engaged in an "intensive campaign" and "major selling effort" in connection with the Dennison issue and hence was participating in a "distribution" within the meaning of Rule 10b-6. Thus, between June 2 and June 20, 1972 Carlton sold approximately 380,000 shares of Dennison to its customers and in most instances these were solicited transactions. The sale of such a large block of shares may be said to constitute a "distribution". Bruns, Nordeman & Co., 40 S.E.C. 660 (1961). It is clear, therefore, that Carlton through Rega when persuading M. S. Wien to trade the Dennison issue violated Rule 10b-6.

The Court found that Coven aided and abetted this violation. As the Court has indicated there was credible testimony that Coven knew beforehand that M. S. Wien was going to appear in the pink sheets. Lian, a trader at Stevens, testified that he

was told by Coven that "the brokerage firm of M. S. Wien & Company would be making a market in the [Dennison] stock." (Transcript 1031). While Lian conceded that it was "possible" that this information may have come from someone else, namely Ziffer, he maintained that Ziffer himself could only have obtained this information from Coven. Moreover, the general thrust of his testimony was that the source of his knowledge that M. S. Wien would appear in the pink sheets was Coven. Coven's suggestion that Ziffer may have obtained this information from Rega and in turn passed it on to Lian has no support in the record. In fact, Ziffer himself testified that he had no knowledge beforehand that M. S. Wien would be trading the issue. Rega, of course, denied, having conversations with the trader at M. S. Wien during which he told him that the Dennison issue could be traded. Therefore, Coven's supposition to explain Lian's testimony is pure conjecture.

Coven has also argued that since at the time M. S. Wien appeared in the pink sheets a minimum closing had not yet taken place M. S. Wien could only have been trading on a "when issued" basis since no other legal alternative was possible. Coven cites no authority for this proposition and upon consideration this Court has determined that under the circumstances of this case his argument is not persuasive.

The trader at M. S. Wien testified that he was not making a "when issued" market but rather a regular market (Transcript 1540, 1541) and that he hoped to get the stock in the open market (Transcript 1543) which in fact he did by purchasing most of the shares he was "short" from Carlton. (Transcript 1533). Despite this Coven asserts that the M. S. Wien trade could only legally be on a "when issued" basis. But the Court fails to see how this must be necessarily so simply because the issue had not yet closed. Assuming that M. S. Wien knowing the underlying circumstances had sold the stock to an innocent purchaser, Coven's position would mean that M. S. Wien would have a total defense to its contractual obligation to deliver the stock since it was legally impossible for it to make a regular market. However, on closer examination, it would appear that M. S. Wien could propose to make a regular market although the minimum had not closed. There is no inherent legal impossibility in committing oneself to such an obligation. The fact that the issue had not closed and, therefore, no stock was yet available would create certain risks in the transaction but this goes to the question of the advisability of the contract and not to its legality.

Also the Court notes that judging from the testimony at trial Coven was not as categorical in his assertion that M. S.

Wien could only be trading on a "when issued" basis at the time this matter was specifically brought to his attention. There was testimony from two different witnesses that he had then said that M. S. Wien was "probably" trading on a "when issued" basis and that this could be done. (Transcript 1394, 3153, 3155). Coven's present position is, therefore, somewhat at odds with his prior opinion.

In light of what has been said the Court adheres to its finding that Coven aided and abetted the Rule 10b-6 violation.

D. Appropriateness of Injuctive Relief

In deciding to grant injuctive relief against Coven the Court was not unmindful of the possible adverse impact this may have on his professional career. See Mathews, Liabilities of Lawyers under the Federal Securities Laws, 30 The Business Lawyer 105 (1975). Nevertheless, while this is certainly an important factor to be weighed, it should be emphasized that the "public interest, when in conflict with private interest, is paramount." SEC v. Culpepper, 270 F.2d 241, 250 (2d Cir. 1960).

The testimony at trial in this case revealed that Coven was not just a minor actor in the events surrounding the distribution of the Dennison issue who was misled by other wrongdoers. Rather he provided the impetus for the launching of the issue.

He drafted the pertinent documents as counsel for the issuer and sought out the underwriters and the escrow agent. It was to him that the issuer and at least one of the underwriters (Stevens) consistently turned for information respecting the Dennison distribution. In this respect it is noteworthy and significant that although another attorney was supposedly acting as counsel for Stevens when problems arose or questions concerning Dennison had to be answered Stevens looked to Coven for guidance. Further, it was in part to Coven that the bank turned for some assurance that the minimum had been sold. In short, Coven played a key role in the Dennison distribution. 116a

Yet despite this Coven displayed very little if any sensitivity to his responsibilities. He was oblivious to the number of red flags along the way indicating that something was amiss with the Dennison issue. The fact that the escrow account did not have the correct amount of funds, that M. S. Wien was trading the stock and to use Coven's own words possibly "pirating" the issue, that he had no precise idea as to the number of shares sold, that his estimate had proven to be erroneous - all this and more was ignored by Coven. Even when admittedly Coven became aware of Rega's misdeeds, his actions reflected little dismay at what had transpired. Though he professed to be "angry" at Rega, shortly thereafter he

embarked on a new issue again with Carlton as the underwriter. Also the Court notes that though Republic National Bank claimed not to have authorized the use of its name as escrow agent following the Dennison closing, the bank was listed as an escrow agent for a distribution in which Coven was counsel for the issuer.

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In fairness the Court should note that Coven has indicated -- without conceding any wrongdoing on his part -- that subsequent to the Dennison issue he has been very strict in the procedures employed when involved in a distribution of the Dennison type. However, such an avowal that the practices complained of have ceased is insufficient to defeat an application for injunctive relief.

Having assessed the facts elicited at trial and having weighed all the proper considerations the Court adheres to its determination to issue a permanent injunction against Coven.

The motion to reconsider is denied.

SO ORDERED.

Dated: New York, New York
August 18, 1975.
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LAWRENCE W. PIERCE
U. S. D. J.

1. Indeed, Coven goes so far as to claim that the SEC "throughout the trial of [the] action never seriously proposed that at least 3,000,000 shares had not been sold." (Reply Memorandum at 10). Little need be said about this except to note that it is at variance with and completely ignores the Commission's position as expressed in its pretrial and post-trial submissions.

2. Coven asserts that the Court has adopted an "incongruous position" in finding that, though the minimum was not sold, the underwriter had to exercise "best efforts" to sell the remaining portion of the issue. This argument is not well taken. At the point of the closing there was an obligation to return the funds to the subscribers if it was found that the minimum had not been sold. However, Rega made it appear that the minimum had in fact been sold. Having made such a misrepresentation, the Court sees nothing "incongruous" in requiring that the underwriter fulfill its obligation under the Underwriter Agreement, as represented to the public in the prospectus, and engage in "best efforts" to sell the remaining shares. Otherwise an underwriter would unilaterally divest itself of the obligation to engage in "best efforts" which arises when it represents that a minimum portion of an issue has been sold simply because a Court later finds that representation to have been false.

3. Coven has gone into a somewhat lengthy explanation in an effort to show that contrary to the Court's finding the shares issued to Carlton were exactly the number it requested. Aside from the fact that the direct bearing of this point on the Court's findings with respect to Coven is not made clear, the Court notes that in the course of the explanation two arithmetical errors were made in order to arrive at the desired result. It should be remembered that Carlton claimed to have sold 2,724,000 shares. Yet the delivery bill (Plaintiff's Exh. 22) indicated that it had received a

FOOTNOTES (Cont'd.)

total of 2,727,000 shares. Despite this Coven claims that the delivery bill was incorrect (as shown by the supporting schedules) and should have instead reflected 2,547,700 shares. Coven therefore concludes that there was a shortage of 177,300 shares. But assuming that Coven's assumptions are correct and that the delivery bill should have been for 2,547,700 shares then there was a shortage of 176,300 shares (2,724,000 minus 2,547,700) and not as Coven claims 177,300 shares. Coven then attempts to account for his supposed shortage of 177,300 shares by subtracting from the number of shares indicated in the listing annexed to the delivery bill to Stevens (261,300 shares) 84,000 shares. This computation would, of course, result in the desired figure of 177,300. Finally, Coven asserts that if the figure of 177,300 (which he has erroneously arrived at in the first place) is added to the number of shares in the listing annexed to Carlton's delivery bill (2,547,700 shares) the result is that Carlton received 2,724,000 shares - the exact number of shares ordered by Carlton. But as a matter of simple arithmetical computation Coven's conclusion is erroneous since 2,547,700 shares plus 177,300 shares equals 2,725,000 shares not 2,724,000 shares as Coven represents. In short, Coven's excercise demonstrates nothing but that as the Court found the number of shares issued to Carlton did not coincide with the number it had ordered.

G E R A L D P. B O W E S, called as a witness by the plaintiff, being first duly sworn, testified as follows:

MR. HEGHMANN: Prior to commencing with the questioning of Mr. Bowes I would like to offer in evidence at this time the official registration statement on file with the Securities & Exchange Commission for Dennison personnel.

This registration statement bears the seal of the corporation, which was attached as of June 28, 1973, and it is a public record. I would like to offer it as Plaintiff's Exhibit 1.

THE COURT: If there is no objection it is received.

(Plaintiff's Exhibit 1 was received in evidence.)

DIRECT EXAMINATION

BY MR. HEGHMANN:

Q Please state your full name?

A Gerald P. Bowes.

Q What is your address?

A 330 East 33rd Street, New York City.

Q Mr. Bowes, what is your current occupation?

A I am president of Dennison Personnel.

Q For how long have you been president of Dennison Personnel?

A Approximately six years.

Q How long has Dennison personnel been in existence?

A Approximately six years.

Q Is Dennison Personnel a publicly owned company?

A Yes, it is.

Q When was a completed public offering of Dennison stock first effected?

MR. FRANK: Objection. The question is wholly material to the entire trial. This witness has not been qualified as to whether it has been completed within the meaning of the underwriting agreement or the Securities Act.

THE COURT: Sustained.

Q Mr. Bowes, when did you first consider making a public offering of Dennison Personnel stock?

A To the best of my knowledge about 1969.

Q What steps, if any, did you take to effect a public offering of Dennison stock?

A We undertook an underwriter in 1969.

Q What was the name of that underwriter?

A Robert Cea & Company.

Q Did Robert Cea & Company sell any Dennison

Personnel stock? 122a

A No, it did not.

Q Do you know why, sir?

A They went bankrupt before it became effective.

Q After Robert Cea & Company went bankrupt what did you do?

A We tried to seek another underwriter.

Q Did you find another underwriter?

A Yes, we did.

Q Who was that, sir?

A Eventually we found Carlton-Cambridge and Stevens, Jackson & Seggos.

MR. FRANK: I move to strike that as not responsive to the question.

THE COURT: Overruled.

Q Mr. Bowes, how did you come in contact with Stevens, Jackson & Seggos and Carlton-Cambridge?

A One of our clients happened to be Hawrold Kaplan, and he introduced me to Bernard Coven. Bernard Coven initiated the underwriting through the getting of an underwriter.

Q Who was Harold Kaplan?

A Harold Kaplan worked for Clayton Securities.

Q Did Mr. Kaplan introduce you to Mr. Coven?

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A Yes, he did.

Q Approximately when did you meet Mr. Coven?

A June of 1971.

Q Do you recall the circumstances of your first meeting with Mr. Coven?

A Mr. Kaplan and I went up to his office in New York City.

Q Do you recall if anyone else was present?

A No one else was present.

Q Did you know why Mr. Kaplan was taking you to meet Mr. Coven?

A I believe to help institute an underwriting, an undertaking for the underwriting.

Q Do you recall any conversations in which Mr. Kaplan described Mr. Coven prior to your first meeting?

MR. FRANK: Objection.

MR. HEGHMANN: I am merely asking that this statement be introduced not for its truth, but merely to indicate the state of mind that Mr. Bowes was in when he went up to meet Mr. Coven.

THE COURT: Sustained.

Q Can you describe for the Court what occurred during this first meeting to the best of your recollection?

A I met Mr. Coven in one day and was told that,

yes, he thinks he can get an underwriter, and he asked me to make a certain list, which I did, and as far as I was concerned, we shook hands and he said that he would handle it as far as an underwriter is concerned.

Q Do you recall the approximate date of this first meeting?

A I believe to the best of my knowledge it was June 30 or thereabouts.

Q At this meeting did you retain Mr. Coven as your counsel?

A Yes, I did.

Q Do you recall if you signed any documents at this meeting?

A I believe I did.

Q Do you recall what they were?

A I believe that one was a retainer agreement and the other was an agreement for the underwriting.

Q At this time, Mr. Bowes, I hand you what has been marked Plaintiff's Exhibit 2 for identification and ask you to examine it.

Sir, have you had an opportunity to examine it?

A Yes.

Q Do you recognize it?

A Yes, I do.

Q Can you tell the Court what it is?

A It is the retention agreement that I signed around June 30.

Q When was that signed?

A Around June 30, 1971.

Q Was it signed at the initial meeting with Mr. Coven?

A Either at the initial meeting or the very next day.

MR. HEGEMANN: We offer at this time Plaintiff's Exhibit 2.

THE COURT: Any objection?

Received.

(Plaintiff's Exhibit 2 was received in evidence.)

Q At this time I hand you what has been marked as Plaintiff's Exhibit 3 for identification and ask you to examine it.

Mr. Bowes, have you had an opportunity to examine it?

A Yes, I have.

Q Have you seen it before?

A Yes.

Q Can you describe to the Court what it is?

A It is the original agreement of Mr. Coven and Dennison Personnel to be the attorney in the undertaking of an underwriter.

MR. HEGHMANN: At this time I would like to offer Plaintiff's Exhibit 3 in evidence.

THE COURT: Received.

(Plaintiff's Exhibit 3 was received in evidence.)

Q Mr. Bowes, at this initial meeting in Mr. Coven's office, do you recall if you discussed the size of the offering with Mr. Coven?

MR. FRANK: Your Honor, we have trouble hearing Mr. Heghmann.

THE COURT: Read the question.

(Question read.)

A Yes, I believe so.

Q Sir, what was the size of the public offering as contemplated at that time?

A To the best of my knowledge it was $5 a share, a hundred thousand shares.

Q Sir, do you know how these figures were arrived at?

A Yes, it was from the previous offering that was aborted.

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Q Sir, upon what were these figures based, if anything?

A They were based mainly on the moneys that we needed to expand our operation for the application proceeds.

Q Do you recall if you discussed these needs with Mr. Coven?

A Yes, we did. I don't believe it was that day.

Q Do you recall what else occurred after this initial meeting?

A Yes. I was handed a pen and I wrote down a list of the various names which I was to make checks out to the following day.

Q Sir, who gave you the list of names?

A I wrote the list of names down from Mr. Coven.

Q Sir, do you recall signing any underwriting agreements at that meeting?

A I believe I did also.

MR. HEGHMANN: At this time I would like to hand to the witness what has been marked as Plaintiff's Exhibit 4.

Q Do you recognize that?

A Yes.

Q Describe what it is.

A It is the underwriting agreement with Lehman-

Bartel & Company.

THE COURT: I don't think they can hear you.

(Question and answer read.)

Q Sir, when you signed this document what was your understanding as to its effect?

A Lehman-Bartel would be the underwriter for Dennison Personnel.

MR. HEGHMANN: At this time I would offer in evidence Plaintiff's Exhibit 4.

THE COURT: Any objection?

Received.

(Plaintiff's Exhibit 4 was received in evidence.)

MR. HEGHMANN: For the record, copies of these exhibits are being passed to counsel at the time of their offer.

Q I would like to ask the witness to examine what has been marked as Plaintiff's Exhibit 5 for identification.

Sir, do you recognize what has been marked as plaintiff's Exhibit 5 for identification?

A Yes, I do. This is the list of various checks that I made out.

MR. HEGHMANN: For the record, Plaintiff's

issue this check?

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A Yes, he did.

Q Did Mr. Coven ever indicate to you why you would be paying the underwriter's attorney?

MR. FRANK: I still can't hear counsel's question.

THE COURT: It is somewhat difficult for me to hear at all; it must be more difficult for counsel, since you have your back to them. Keep that in mind. Perhaps you should slow down a little bit and talk a little louder. Turn a little toward the other way. It would be helpful.

MR. HEGHMANN: Yes.

(Question read.)

A To the best of my knowledge I think Mr. Coven said, "To save time we will give you a list and you make out the checks and we will get this out of the way."

Q Sir, did Lehman, Bartel & Company actually effect a public offering of Dennison personnel?

A No.

Q Did they ever sell any stock?

A No, they did not, to the best of my knowledge.

Q Do you know why they did not sell any stock?

A No, I do not.

Q When did you first find out that Lehman, Bartel

& Company would not do the public offering?

A I don't really recall when I found out.

Q Do you recall how you found out?

A I was told by Mr. Coven that Lehman, Bartel was no longer going to be the underwriter.

Q Do you recall what else he said at that time?

A No, I do not.

Q Do you recall if he indicated that he would find another underwriter?

A Yes, he indicated he would find another underwriter.

MR. FRANK: May we fix the time?

THE COURT: Yes, what is the time of this conversation?

THE WITNESS: To the best of my knowledge I believe it was very early 1972.

Q Did Mr. Coven obtain the services of another underwriter to do the public offering?

A Yes.

MR. FRANK: Objection to the form of the question.

THE COURT: I will allow it.

Q Do you recall what the name of that underwriter was?

A Stevens, Jackson & Seggos.

Q Do you recall how you find out that Stevens, Jackson & Seggos would be the underwriter for Dennison Personnel?

A I was asked by Mr. Coven if I had any objection to having them doing the underwriting.

Q Do you recall approximately when this was?

A To the best of my knowledge I believe it was very early 1972.

Q Do you recall what Mr. Coven said about Stevens, Jackson & Seggos?

A No, I do not.

Q Do you recall whether Mr. Coven indicated that there would be more than one underwriter?

MR. DERFNER: Objection to a leading question.

THE COURT: It is leading: I will allow it. Go ahead, answer the question, sir.

A Not in the very beginning, no. He just said, "Jackson, Stevens & Seggos would be an underwriter. How would you care for that?"

Q Do you recall if Mr. Coven indicated why he had chosen Stevens, Jackson & Seggos?

A No.

Q Do you recall if Mr. Coven indicated that he had

any prior relationship with Stevens, Jackson & Seggos?

A No, I do not recall at all. 132a

Q Sir, did there come a time when an additional underwriter was selected to do the public offering?

A Yes.

Q Do you recall what the name of that underwriter was?

A Carlton-Cambridge.

Q Sir, how did you learn that Carlton-Cambridge would act as an underwriter?

A To the best of my knowledge I believe it was Mr. Coven asked me what would I think of having two underwriters, and he mentioned Carlton-Cambridge.

Q Do you recall approximately when this was?

A Again, to the best of my knowledge, early 1972.

Q Sir, did you meet prior to the time that you were informed that Carlton-Cambridge would act as a co-underwriter, did you meet with, had you met with anyone from Stevens, Jackson & Seggos?

A No, I have not.

Q When did you first meet a representative of Stevens, Jackson & Seggos?

A At a cocktail party we had in Fraunces Tavern in April.

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133a

Q This would be April of '72, sir?

A Yes, sir.

Q Did you meet any representatives of Carlton-Cambridge & Company?

A No, I did not.

Q You originally discussed the offering as 100,000 shares at $5?

A Yes.

Q Was the stock sold at $5 a share?

A No, it was not.

Q Were the terms of the offering changed?

A Yes.

Q Do you recall approximately when they were changed?

A To the best of my knowledge, early 1972.

Q Do you recall approximately how early in 1972?

A To the best of my knowledge, January or February.

Q Was this prior to any meeting with a representative of Stevens, Jackson & Seggos or Carlton-Cambridge?

A No -- yes, it was.

Q Do you want the question read?

(Question read.)

A Yes, it was prior.

Q Do you recall why the size of the offering was

changed? 134a

A It was changed a few times, and the last time it was changed to 10 cents, because I believe the people involved thought that it would sell better at a lower price because the financials were getting lower; they were not as good.

Q Sir, I hand you what has been marked Plaintiff's Exhibit 6 for identification and ask you to examine it.

Sir, do you recognize that document?

A Yes, I do.

Q Will you describe to the Court what it is?

A This is the revised agreement between Mr.Coven and Dennison Personnel.

Q Mr. Bowes, do you know why the agreement was revised?

A No, I do not.

MR. DERFNER: Could we have that last question read back, please.

(Question read.)

Q How did you come to enter into a revised agreement with Mr. Bowes?

A I thought it best to go along with the revised agreement because the issue was nearly effective and I felt that if I didn't go along with it it might throw a

monkey wrench into everything.

Q Who suggested the revised agreement?

A Mr. Coven.

Q Do you recall if Mr. Coven indicated any reason why the revision was necessary?

A Yes. He said that he needed it for out of pocket expenses that he incurred.

Q What did he indicate in connection with those out of pocket expenses?

A That there was an extra $5000 to be added to the agreement.

Q Mr. Bowes, do you recall if Mr. Coven indicated any specific reason for the increase in out of pocket expenses?

MR. COVEN: Please step back; we can't hear you.

A Yes, he mentioned the fact that there was a Mr. Gale that had to be paid.

MR. HEGHMANN: Your Honor, at this time I offer Plaintiff's Exhibit 6 in evidence.

MR. FRANK: No objection.

(Plaintiff's Exhibit 6 was received in evidence.)

Q Mr. Bowes, I am going to return to you what has

Q Mr. Bowes, when did you first meet the representative of Stephens, Jackson, Sagos, Inc.? 136a

A To the best of my knowledge it was at the cocktail party at Fraunces Tavern early in April, 1972.

Q Mr. Bowes, do you recall was there any special occasion for this cocktail party?

A To the best of my knowledge, I was told by Mr. Coven it was a proceeding that was done on a regular basis when an issue would become effective.

Q Do you recall of any particular name or description that was attached to this meeting?

A To the best of my knowledge I was told it would be called a due diligence meeting.

Q To the best of your recollection, can you describe what occurred at this meeting?

A To the best of my knowledge there were prospectuses laid on tables and there were a few accounts that had been doing business with Dennison Personnel invited and there were other accounts which I have no knowledge of that were there at the party.

Q Do you recall any discussions with Mr. Coven at this meeting?

A To the best of my knowledge the discussion I had with Mr. Coven was myself asking him what I should say if

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they called on me to give a speech.

Q Was a representative of Carlton-Cambridge present?

A To the best of my knowledge, no.

Q Do you recall who the representative of Stephens, Jackson, Sagos was who was presen

A Yes, it was Mr. Jules Ziffer.

Q Do you recall any discussion with Mr. Ziffer at the time of this meeting?

A No, I was introduced to him and he said that he would visit my office in a day or two.

Q Do you recall approximately when this meeting took place?

A To the best of my knowledge early April, 1972.

Q At the time of this meeting did you know that Carlton-Cambridge would act as co-underwriter?

A Yes, I did.

Q At any time prior to this meeting had you met with any representative of Carlton-Cambridge?

A No, I did not.

Q Sir, subsequent to this meeting, what occurred?

A Mr. Ziffer came by the office after the meeting in a few days and we talked and then in a week or so I was notified that there would be a meeting at the SEC building with the SEC in the federal building.

Q When Mr. Ziffer visited your office, do you recall what was discussed?

A No, it was just ordinary conversation.

Q Do you recall if Mr. Ziffer made any projection as to how many shares Stephens, Jackson, Sagos would sell?

A To the best of my knowledge I believe Stephens, Jackson, Sagos was to sell half and Carlton-Cambridge was to sell half.

THE COURT: Is that what Mr. Ziffer had said?

THE WITNESS: I believe so.

THE COURT: Let's strike the answer and start over on that again so that we have it quite clear.

Q Approximately how long after the due diligence meeting did Mr. Ziffer visit your office?

A I believe in a day or two.

Q At that meeting do you recall what you said to him?

A No, I do not.

Q Do you recall what he said to you?

A To the best of my knowledge, I believe he mentioned that he would be selling half of the issue and Carlton-Cambridge would be selling half of the issue.

Q When Mr. Ziffer stated that he would be selling half, do you know for whom he was speaking?

A Mr. Ziffer represented Stephens, Jackson, Sagos.

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Q When Mr. Ziffer visited your office, do you recall what was discussed?

A No, it was just ordinary conversation.

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A I believe in a day or two.

Q At that meeting do you recall what you said to him?

A No, I do not.

Q Do you recall what he said to you?

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A Mr. Ziffer represented Stephens, Jackson, Sagos.

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Q To the best of your knowledge, was he indicating that Stephens, Jackson, Sagos would sell half?

A Yes, he was.

Q So, did you attend a subsequent due diligence meeting?

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A Yes, I did.

Q Where was that held?

A Federal building, New York City.

Q Do you recall what agency it was held at?

A The Securities and Exchange Commission.

Q Do you recall what occurred at that meeting?

A To the best of my knowledge, I do.

Q Could you describe for the court what occurred at that meeting?

THE COURT: Do we have an approximate date on that yet?

MR. FRANK: May we also have, your Honor, who was present?

THE COURT: Yes.

Q Do you recall approximately what date it was?

A April 25, 1972.

Q Do you recall who was present?

A Present were Mr. Coven, Mr. Ackerman, Mr. Rega, Mr. Ziffer —

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THE COURT: Just a moment. All right.

A (Continuing) Mr. Kennedy, myself, Mr. Levin.

THE COURT: That is L-e-v-i-n?

THE WITNESS: L-e-v-i-n.

141a

THE COURT: We will recess at this point for ten minutes. That clock, I am informed, is slow. According to my watch it is 11:30 at this time. We will take a ten-minute recess.

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(Recess)

THE COURT: All right, proceed.

BY MR. [redacted]:

Q Mr. Bowes, do you recall what occurred at the due diligence meeting held by the SEC?

A To the best of my knowledge, we were given the ground rules of what they expected us to do when it became effective.

Q Do you recall what these ground rules were?

A No, I do not.

Q Did you have any discussions with Mr. Rega at this meeting?

A Briefly, when the meeting was over, we introduced ourselves downstairs in the lobby.

Q Do you recall what was discussed at that time?

A Again to the best of my knowledge, I believe it

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was discussed tht they were to sell 50 per cent of the offering and Stephens -- "they" meaning Carlton-Cambridge-- and Stephens Jackson Sagos was to sell the remaining 50 per cent.

THE COURT: This is a conversation with Mr.?

THE WITNESS: Rega.

Q Do you recall any conversation with Mr. Coven at this meeting?

A No, sir.

Q Sir, at the time of this meeting did you know when the issue would go effective?

A After the meeting I was aware that the issue would become effective the next day.

Q What happened after this meeting?

A I received a telegram from the Securities and Exchange Commission saying that our offering had become effective.

Q Subsequent to the SEC's due diligence meeting, after you left the federal building, did you have any conversations with Mr. Rega?

MR. DAVIS: Asked and answered, your Honor.

THE COURT: Well, did you have any other conversations with Mr. Rega?

THE WITNESS: After the due diligence meeting?

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is that correct?

143a

MR. HEGHMANN: Yes, your Honor.

THE COURT: Any objection to that as such?

MR. FRANK: No objection.

THE COURT: No objection to 7, received.

xx (Plaintiff's Exhibit 7 received in evidence.)

Q Mr. Bowes, you have stated that Mr. Coven called you and indicated that a closing date would be set, is that correct?

A Yes.

Q Did Mr. Coven ever call you and tell you that a date had been set?

MR. FRANK: Objection to the form of the question. I think it is an improper way to ask a witness a question. It is certainly most leading, your Honor.

THE COURT: Well, I think it might be confusing since the witness has testified there were several calls in which several statements were made concerning closings so I will sustain the objection.

Q Mr. Bowes, was a date set for a closing of Dennison Personnel?

A Yes, there was.

Q Do you recall when that date was?

A To the best of my knowledge, it was early June, 1972.

Q Do you recall how you learned that a closing had been scheduled? 144a

A Yes. I received a call after 5 o'clock saying I should be at the Republic National Bank the next day at 3 o'clock.

Q Did you go to the bank the next day?

MR. FRANK: May we fix the time of the telephone conversation and the date?

THE COURT: Of the telephone conversation?

MR. FRANK: Yes.

THE COURT: Yes.

Q Do you recall approximately when this telephone conversation was?

A I did not receive the call myself, an associate received the call and when I called into the office, I was in another office, I was told. It was 5:30 or thereabouts when I talked to my associate and he said there would be a closing tomorrow at the bank.

MR. FRANK: Move to strike everything his associate said, your Honor, as not binding on any of the defendants.

THE COURT: All right, I will take it. Go ahead.

Q Do you recall what date this was?

A No, I do not.

145a

Q Was it in June?

A Yes.

Q Do you recall was it the first week of June?

A To the best of my knowledge, either the first week or second week.

Q Subsequent to this telephone call, what did you do?

A The next day I appeared at the bank at 3 o'clock.

Q When you appeared at the bank, was anyone present?

A To the best of my knowledge Mr. Ziffer, representing Stephens, Jackson Sagos, was there and myself.

MR. FRANK: May we have the date of this appearance fixed, your Honor?

THE COURT: He said it was the next day and he had already said that he thought that the telephone call setting it up for the following day was in the first or the second week of June of '72.

Is that correct?

THE WITNESS: Yes, sir.

THE COURT: You don't recall the date any better than that?

THE WITNESS: No, sir.

THE COURT: All right.

Q Do you recall the approximate date of this second telephone call?

A No, I do not. 146a

Q Do you recall who the call was from?

A It was from Mr. Coven's office.

Q What did you do subsequent to this telephone call?

A Again I appeared at the bank the following day.

Q Do you recall the date that you appeared at the bank?

A No, I do not.

Q When you went to the bank, do you recall who was present?

A There was Mr. Coven, Mr. Ackerman, Mr. Rega, Mr. Levin, Mr. Ziffer, Mr. Grecco, Mr. Spear and myself.

Q Can you describe to the court to the best of your recollection what occurred at this second meeting at the bank?

A To the best of my knowledge, it was not very orderly.

MR. FRANK: Move to strike that, your Honor.

THE COURT: Strike it. Go ahead.

A I don't know how to explain it. There were many arguments at this meeting.

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(Plaintiff's Exhibit 10 was marked for

MR. FRANK: Move to strike that, your Honor. I think he should be asked to relate who said what. That is what we are interested in, not his conclusions.

MR. HECHMANN: Let me withdraw the question, your Honor.

147a

THE COURT: All right.

Q Mr. Bowes, did you go to this meeting accompanied by anyone else?

A Yes, I did.

Q Who accompanied you?

A I was accompanied by Mr. Grecco and Mr. Spear and Mr. Kennedy. I did not mention Mr. Kennedy before.

Q Who was Mr. Kennedy?

A He works for me.

Q What does he do?

A He is sort of my secretary.

Q Who is Mr. Grecco?

A Mr. Grecco is an attorney.

Q Why did Mr. Grecco accompany you to this meeting?

A I asked him to.

Q Do you recall why you asked him to come with you?

A I wanted to have some council to represent me.

Q Was Mr. Grecco there accompanying you as counsel?

A Yes.

Q Do you recall why you thought you needed counsel?

MR. FRANK: Objection.

148a

THE COURT: Yes, sustained.

Q When you arrived at the meeting, do you recall who you spoke with?

MR. FRANK: Your Honor, at this point may I ask of Mr. Grecco, who is present in this courtroom and who is on the witness list, be sequestered during this portion of the testimony? I do realize that he is the personal attorney for Mr. Bowes and so he has told me, but I do think that the better part of justice may be served if Mr. Grecco is sequestered during this portion of the testimony.

THE COURT: All right, any reason why not?

MR. GRECCO: Your Honor, if I may, I don't have any standing in this proceeding as of this time. My name is Alfred Grecco. My office is at 400 Madison Avenue.

If I may dispute the request of counsel, number 1, I am an attorney fully cognizant of my obligations to speak nothing but the truth once I take the stand and, secondly, I am only interested in his testimony professionally inasmuch as there were confidential conversations between myself and my client personally, which I do not think is the province of this proceeding inasmuch as he is only a witness here and not a party and the only reason I would

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THE COURT: Yes, strike that. Based on what you heard, did you do something?

149a

THE WITNESS: Yes, sir.

THE COURT: What did you do?

THE WITNESS: I sought out Mr. Coven and asked him if he wanted to talk about this in the back of the room.

Q Do you recall what his response was?

A He said, "Yes."

Q Did you have any discussion with him?

A Yes, we did.

Q How many parties were there to this discussion?

A To the best of my knowledge, it was Mr. Coven and myself.

Q Do you recall who spoke first?

A To the best of my knowledge, I did.

Q Do you recall what you said to him?

A I asked him if he intended to sign --- co-sign checks for the company.

Q Can you recall what his response was?

A He said, yes, he did and I asked him his reasons.

Q Do you recall what he said?

A To the best of my knowledge his reason was that he wanted to safeguard the funds.

Q Do you recall what your response was?

A Yes. I told him that if that was the case, there would be no closing. 150a

Q Do you recall if you said anything else?

A Yes. I believe I verbally abused Mr. Coven.

Q Do you recall what Mr. Coven's response was?

A No, I believe I walked away from Mr. Coven or Mr. Coven walked away from me.

Q What occurred next, sir?

A I am not too clear because I was not thinking of anything else.

b4

Q Sir, do you recall if you had any conversations with Mr. Rega at this meeting?

A I do not recall.

Q Sir, do you recall any conversations with Mr. Rega subsequent to the April 25th due diligence meeting at the SEC and prior to this meeting at the Republic Bank?

A I might have had some phone conversations.

Q Do you recall if you did, in fact, have phone conversations ?

A To the best of my knowledge, I believe I had a few phone conversations with Mr. Rega.

Q Do you recall if you called Mr. Rega during this period?

A To the best of my knowledge, I believe I did.

151a

Q Did Mr. Rega return your calls?

A Yes, he did.

Q Do you recall approximately when the first telephone call was?

A No, I do not.

Q Do you recall approximately how long after the issue became effective you called Mr. Rega?

A To the best of my knowledge a week or two weeks.

Q Do you recall what you said to Mr. Rega?

MR. FRANK: If your Honor please, in all of the conversations between this witness and any of the other defendants and Mr. Coven, may I have a standing objection as not binding on my client, even though the Commission has alleged acting in concert, and subject to proving they are acting in concert --

THE COURT: I will take it subject to connection.

MR. DAVIS: Could we have this placed in time?

THE COURT: I think the preceding question tells that, does it not?

MR. DAVIS: There is a period of some two or three months as to when these conversations took place, and don't know whether this was closer to the closing or when. There were a number of conversations.

(Last few questions and answers read.)

MR. HEGHMANN: Maybe if I approach it in a different way we can clarify it. 152a

Q Mr. Bowes, going back to the end of April, 1972, and the beginning of June, 1972, you indicated that there was a due diligence meeting being held at the Securities & Exchange Commission on June 25 and that the issue became effective the following day? Is that correct?

A Yes.

Q Did you have any idea as to how successful the selling effort was going or what progress was being made?

A No.

Q Did you attempt to get any information on this?

A Yes, I did.

Q Do you recall what you did?

A I asked Mr. Coven, I asked Mr. Ziffer of Stevens, Jackson & Seggos, and I asked Mr. Rega.

Q Do you recall whom you approached first?

A Mr. Coven.

Q Do you recall approximately when you first approached him?

A In the phone conversations of a week or two after the due diligence meeting.

Q Do you recall what information Mr. Coven gave to you concerning this sales effort?

MR. FRANK: I believe those conversations have already been explored and I think the witness already said what was said on those two occasions, that he doesn't remember what took place after that. 153a

THE COURT: I will allow it.

A I asked Mr. Coven how the issue was going and I believe Mr. Coven said the issue was going along fine.

Q You have indicated that you approached Mr. Rega?

A Yes.

Q Approximately when did you approach Mr. Rega?

A After I talked to Mr. Coven and Mr. Ziffer, I called Mr. Rega's office.

Q Did you speak with Mr. Rega?

A To the best of my knowledge, I believe so.

Q Do you recall what you said to Mr. Rega?

A I asked Mr. Rega how the issue was selling.

Q Do you recall what his response was?

A He said the issue was selling fine.

Q Do you recall what the terms of the issue was in connection with the number of shares sold?

A It was a 3 million or none; I believe it was a minimum-maximum.

Q Do you recall what the minimum was?

A 3 million shares.

Q Do you recall what the maximum was?

A 6 million shares. 154a

THE COURT: At 10 cents a share?

THE WITNESS: Yes, sir.

Q Prior to speaking with Mr. Rega did you speak with Mr. Ziffer?

A Yes, I did.

Q What did you say to Mr. Ziffer?

A I asked Mr. Ziffer how the issue was selling.

Q Do you recall what his response was?

A He told me that his share was doing fine.

Q Did Mr. Coven ever indicate a specific number of shares that had been sold?

A No, he did not.

Q Did Mr. Rega?

A No.

Q Did youhave any subsequent conversations with Mr. Rega prior to the second meeting at the bank?

MR. DERFNER: At this point could we clarify this? Were the three conversations that the witness testified to on the same day?

THE COURT: Yes, clarify it.

Q Mr. Bowes, I believe you indicated that you approached Mr. Coven first?

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A To the best of my knowledge possibly a week later.

155a

Q That you approached Mr. Rega?

A To the best of my knowledge.

Q Was this in person?

A No, it was not.

Q By teleph one?

A Yes.

Q Do you recall what you said to him?

A I still inquired about the issue, how it was selling.

Q Do you recall what his response was?

A To the best of my knowledge it was the same response as the first time, everything was fine.

Q Do you recall speaking with Mr. Rega a third time prior to the meeting at the bank?

A To the best of my knowledge I believe I did, or if I didn't, maybe Mr. Kennedy, my associate, might have called him.

Q Do you recall if you spoke to him a third time?

A No, I did not.

Q Subsequent to initially approaching Mr. Ziffer, did you subsequently approach him in connection with the sales effort?

156a

A I did, yes.

Q Do you recall when that was?

A Mr. Ziffer dropped into the office every day or thereabout.

Q Did you discuss the sales effort with him?

A Yes.

Q Do you recall how he described the progress of the selling?

A He again told me that his part of the issue was doing fine.

Q Do you recall if Mr. Ziffer ever informed you that Stevens, Jackson & Seggos had stopped selling the issue?

A No, he did not.

Q Do you recall if Mr. Rega had ever informed you that Carlton-Cambridge had stopped selling the original issue?

A No.

Q This is the first meeting atthe bank?

A Yes.

Q When you went to the bank for the second time, the meeting that we have just described, did you know how many shares had been sold of Dennison Personnel?

A I do not know how many shares were sold.

157a

Q Did you know what the purpose of the meeting was?

A I believe that the purpose of the meeting was to have a minimum closing.

Q Was it your understanding that this would be the termination of the original offer?

MR. JAFFE: I object.

THE COURT: Sustained.

Q Do you recall if you discussed the purpose of this meeting with Mr. Coven?

MR. JAFFE: I object. He has already answered the question and testified that the purpose of the meeting was to close the minimum issue.

THE COURT: I will allow it.

A I don't recall talking to Mr. Coven about it.

Q At the meeting itself do you recall any conversations with Mr. Rega?

A I do not recall any conversations with Mr. Rega.

Q Do you recall if anyone at the meeting indicated to you that the selling would stock?

A No.

Q Do you recall if anyone at the meeting indicated to you that the selling would continue?

MR. JAFFE: I object. 158a

THE COURT: I will allow it.

A I was not told that the selling would stop.

Q Do you recall anyone at the second meeting at the bank indicating to you that the selling would continue?

A Yes, I do recall the selling would continue.

Q Do you recall who indicated this to you?

A No, I do not.

Q Did you receive any funds at this closing?

A No, I did not receive any funds.

THE COURT: Do we have a date of any kind on this?

MR. HEGHMANN: This meeting occurred on June 12 at the Republic National Bank, it will be established later.

Q Do you know why you did not receive any funds at this time?

A To the best of my knowledge I was told that all the checks had not cleared as yet.

MR. FRANK: May we object to that. As far as I am concerned, it's not binding on any of these defendants.

THE COURT: Well, I will take it, but, you

MR. FRANK: I move to strike everything aafter "but" as not being responsive, your Honor.

THE COURT: I am going to grant that.

Q Mr. Bowes, did you subsequently receive funds derived from the public offering?

A Yes, I did.

Q Do you recall approximately when you received the funds?

A To the best of my knowledge approximately a week or two afterwards.

Q I show you what has been marked Plaintiff's Exhibit 8 for identification and ask you to examine it.

Mr. Bowes, do you recognize that document?

A Yes.

Q Can you describe to the Court what it is?

A This is a letter to the American Transfer Company authorizing them to issue three million seventy-three thousand five hundred shares of common stock.

Q Do you recall the circumstances of your writing this letter?

A To the best of my knowledge I believe that is when the check was issued to Dennison Personnel.

Q Do you recall why you wrote the letter?

A To the best of my knowledge I believe that we

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160a

wrote the letter so they could issue the stock to the stockholders now.

MR. DAVIS: Your Honor, if I might interrupt at this point, we have a pretrial order in this action and all exhibits for both plaintiff and defendants were pre-marked and reviewed during the pretrial conferences.

Exhibit No. 8 which was marked in the pretrial order is not the exhibit we have here today.

MR. FRANK: This is Exhibit No. 10 in the pretrial memorandum.

THE COURT: Yes.

Do you want to check that?

MR. HEGHMANN: Yes, your Honor. We have realigned some of our witnesses and changed the order, so that the order of introduction of documents will not specifically follow the order that was signed in the pretrial.

THE COURT: I think what you better do is stay with the original marking, even if you have some gaps in it, otherwise, we are all going to be confused. So let's take this back and refer to that as 10 for identification.

Do you wish to do that?

MR. HEGHMANN: Yes, your Honor.

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(Plaintiff's Exhibit 10 was marked for identification.)

xx THE COURT: The witness has identified it as a letter to the American Stock Transfer Company.

Q Is that your signature, Mr. Bowes?

A Yes.

MR. HEGHMANN: I would like to offer Plaintiff's Exhibit 10 in evidence.

THE COURT: Any objection?

Received.

(Plaintiff's Exhibit 10 was received in evidence.)

mx Q In connection with the Dennison Personnel public offering did you meet any representative of American Stock Transfer Company?

A To the best of my knowledge I did, yes, sir.

Q Who was that?

A Mr. Michael Karfunkel.

Q Do you recall what Mr. Karfunkel's position was?

A To the best of my knowledge he represented the American Stock Transfer Company.

Q Approximately when did you meet Mr. Karfunkel?

A To the best of my knowledge I met him previous to the due diligence meeting at the SEC.

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fication. 162

MR. HEGHMANN: Yes, Your Honor.

Q Have you had an opportunity to examine that?

A Yes.

Q Do you recognize it?

A Yes, I do.

Q Can you describe to the Court what it is?

A It is a letter from Mr. Rega stating that he is going to extend the time on the sale of the remaining issue.

Q Is that a letter or an agreement?

A It is an agreement.

Q Mr. Bowes, is that a Xerox copy or is it an original?

A This is a Xerox copy.

Q Do you recall when the Xerox copy was made?

A To the best of my knowledge it was made early July.

Q Do you recall if that document was delivered alone?

A To the best of my knowledge it was not delivered alone.

Q I show you what has been marked as Plaintiff's Exhibit 12 for identification and ask you to examine it.

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Mr. Bowes, have you had an opportunity to examine Exhibit 11?

A Yes.

163a

Q Have you examined it?

A Yes.

Q What is it?

A This is a letter from Carlton-Cambridge asking Dennison Personnel to deposit a hundred thousand dollars and that they would give me a receipt for same.

MR. JAFFE: Your Honor, the witness apparently is reading from the letter. If the letter were admitted in, it would speak for itself. I would ask some questions with respect to the receipt of this letter.

THE COURT: You want some questions on the voir dire?

MR. JAFFE: Yes.

THE COURT: All right, when he gets to that point.

Q Mr. Bowes, do you recall approximately when you received this letter?

A To the best of my knowledge early July.

Q Do you recall if this letter was accompanied by anything else?

A To the best of my knowledge I believe it was.

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Q Do you recall what accompanied it? 164a

A To the best of my knowledge it was a form or a receipt that would be filled out once the money was turned over.

Q Is this a copy or an original?

A This is a copy.

THE COURT: Referring to --

MR. HEGHMANN: To Plaintiff's Exhibit 12 for identification.

Q Was Plaintiff's Exhibit 12 received approximately the same time as Plaintiff's Exhibit 11?

A To the best of my knowledge it was.

Q Do you recall why copies were made of the originals of what are Plaintiff's Exhibits 11 and 12?

A Yes, because they were going to send a messenger to pick up the originals.

Q Who is "they"?

A Carlton-Cambridge.

Q Were the originals returned to Carlton-Cambridge?

A To the best of my knowledge, yes.

Q Did you retain any copies?

A I retained the Xerox copies.

MR. HEGHMANN: Your Honor, I offer Plaintiff's

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THE COURT: Well, assuming that you establish an invalidity, is that going to speak on the question of its offer at this time? 165a

MR. JAFFE: I am trying to refresh the witness' recollection when I am referring to the exhibit which has now been marked for identification.

THE COURT: So you are making these inquiries merely to probe his recollection on what was received when and that sort of thing?

MR. JAFFE: That is correct.

THE COURT: Go ahead.

Q Mr. Bowes, is it not a fact that the original offering would have expired 60 days after the effective date? Or is that your memory?

A Yes.

Q And the date that you recall now that you received this letter dated July 11, 1972, would have been more than 60 business days beyond April 26?

A I believe so.

Q With these things in mind, do you recall the circumstances under which these two letters came about?

A These letters came about because I wanted to be sure they were extending the issue.

Q You wanted to be sure?

THE COURT: Well, assuming that you establish an invalidity, is that going to speak on the question of its offer at this time?

166a

MR. JAFFE: I am trying to refrash the witness' recollection when I am referring to the exhibit which has now been marked for identification.

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MR. JAFFE: That is correct.

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A Yes.

Q And the date that you recall now that you received this letter dated July 11, 1972, would have been more than 60 business days beyond April 26?

A I believe so.

Q With these things in mind, do you recall the circumstances under which these two letters came about?

A These letters came about because I wanted to be sure they were extending the issue.

Q You wanted to be sure?

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A Yes.

Q In other words, you requested something of this nature, these letters? Is that how they came about?

A Yes.

Q For the benefit of the Court, do you recall how these letters came into your possession?

A To the best of my knowledge they were delivered by a messenger from Carlton-Cambridge.

Q You had asked for these letters?

A To the best of my knowledge, yes.

Q Who did you ask to prepare these letters?

A To the best of my knowledge I asked Mr. Rega.

Q How did you approach Mr. Rega to prepare Exhibits 12 and 11?

MR. HEGHMANN: I will object to that.

THE COURT: Yes, sustained at this time.

Anything further on the voir dire?

BY MR. JAFFE:

Q You have indicated you asked Mr. Rega to prepare these, yet P-12 is signed by George Santoriello. Did you have any conversations with George Santoriello?

A No, I did not.

Q So it is your testimony then that these exhibits were received by you at your request and that you did have

MR. FRANK: Objection. There has been no proof that such, in fact, was the case. That assumes a fact not proven before this court.

THE COURT: Read it back to me, please.

(Record read.)

THE COURT: I will allow the question. My understanding is that you are inquiring as to his state of mind?

MR. HEGHMANN: Yes, your Honor.

A No, sir; I do not.

Q Mr. Bowes, did there come a time when the underwriters ceased selling the new issue?

A Yes.

Q When did you first discover that the underwriters had stopped selling the new issue?

A To the best of my knowledge, I believe it was late July or early August.

Q Do you recall how you discovered that the sale of the new issue had been discontinued?

A Yes, a friend of mine that worked for a brokerage house called me and told me that the issue --

MR. FRANK: Move to strike everything a friend of his told him.

THE COURT: All right, strike that. He hasn't told us anything. A friend of yours told you something, is that

it?

169a

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

Q What was your reaction to this conversation with your friend?

MR. FRANK: Objection, your Honor, to the reaction.

THE COURT: I will allow it. What did you do?

A I couldn't understand the situation because I was—

THE COURT: What did you do after you had this conversation?

THE WITNESS: I believe to the best of my knowledge I called Mr. Grecco.

Q After calling Mr. Grecco, what did you do?

A I believe to the best of my knowledge I called Mr. Coven.

Q Do you recall what you said to Mr. Coven?

MR. FRANK: May we have the time fixed now?

THE COURT: Yes.

Q Again, approximately what time are we speaking?

A To the best of my knowledge, it was late July or early August, I don't recall.

Q Do you have any type of diary or notebook with which you can fix that date?

170a

A No, sir.

Q And you called Mr. Coven, is that correct ?

A Yes.

Q Do you recall what you said to Mr. Coven?

A To the best of my knowledge I asked Mr. Coven if he knew that the stock was being traded in the pink sheets. He said he did not. He said he would look into it and call me back.

Q Did he call you back?

A Eventually, yes.

Q When did he call you back?

A A day later, possibly.

Q After calling Mr. Coven, did you do anything?

A To the best of my knowledge, I tried to reach somebody at Carlton-Cambridge.

Q Were you successful?

A After a few attempts, yes.

Q When you say "reach", did you call them or what did you do?

A Telephoned them.

Q Who did you reach at Carlton-Cambridge?

A To the best of my knowledge, I believe it was Mr. Rega.

Q Do you recall what you said to Mr. Rega?

A I inquired if it was true that the stock was being traded and not being sold any more.

Q Do you recall what his response was? 171a

A To the best of my knowledge, he informed me that he would like to have a meeting at my office the following week.

THE COURT: Excuse me. Would you read the witness' answer before this last one.

(Record read.)

THE COURT: All right.

Q Did Mr. Coven call you back?

MR. FRANK: Objection, your Honor.

THE COURT: I will allow it.

MR. FRANK: Call him back from what?

THE COURT: The testimony is that the witness said that Mr. Coven said he would look into it and call him back.

MR. FRANK: Right, and then there was another question that Mr. Coven eventually called back and the witness responded the next day and now he went to Mr. Rega's call.

THE COURT: A day or so later he called. Then he went to Rega's call.

MR. FRANK: Am I to understand we are back to Coven's call? Is this the same call we are going back to

Q Did you have a meeting with Mr. Rega in the office?

A Yes, I did the following week. 172a

THE COURT: The following week?

THE WITNESS: Yes, sir.

Q Did Mr. Coven call you back prior to your meeting with Mr. Rega?

A To the best of my knowledge, no.

Q Approximately when did this meeting take place?

MR. JAFFE: Your Honor, I just want to understand the proof we are going to make. We are beyond where the issue was traded. We are into August. I don't recall anything relating to this in the pretrial memorandum. I don't know where we are going at this point.

THE COURT: Well, I will allow him to develop it a little bit.

(Question read.)

A To the best of my knowledge the month of August.

Q What part of the month?

A The best of my knowledge I believe it was the middle of the month or thereabouts.

Q Where did this meeting take place?

A Dennison Personnel.

173a

Q Who was present?

A Mr. Rega, Mr. Gamarekian and myself.

Q Do you recall what occurred at this meeting?

A To the best of my knowledge the first thing I asked was it true they stopped selling the issue.

Q Whom did you ask this of?

A Mr. Rega.

Q Did he have any response?

A He said, "Yes, it is true."

Q Do you recall saying anything else?

A I was a little bit dumbfounded, that is all.

MR. DAVIS: Objection, your Honor. This testimony, I believe, is tending to be totally irrelevant, especially as to the proof already adduced by the plaintiff at this trial.

THE COURT: The objection is sustained as to the reaction of the witness.

Go ahead.

Q Do you recall anything else occurring at this meeting?

A To the best of my knowledge I believe they proposed at a later date they might try to do a secondary.

THE COURT: Try to do --

THE WITNESS: A secondary of the remainder.

A Yes, I did.

Q Do you recall whether it was indicated to you by either Mr. Rega or Mr. Gamarekian how many shares had been sold? 174a

A To the best of my knowledge we did not discuss that.

Q Do you recall if there was any discussion of additional funds being --

MR. JAFFE: Your Honor, I object. We have a laundry list of things that could have been talked about. This witness is supposed to give testimony of his recollection.

THE COURT: Sustained.

Q Mr. Bowes, did Dennison Personnel ever receive funds over and above that received from the Republican National Bank in June?

MR. JAFFE: May I have the question again?

(Question read.)

MR. JAFFE: I object to this. There is no foundation for it. It is part of the laundry list of questions to which I have very serious objection.

THE COURT: Overruled.

A We received two checks, but they were in the month of June, I believe, to the best of my knowledge. None after that.

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Q Subsequent to the meeting with Mr. Gamarekian and Mr. Rega, did you have a conversation with Mr. Coven?

A To the best of my knowledge, yes.

175a

Q Do you recall when tht occurred?

A No, I do not.

Q Do you recall the substance of that discussion?

A Itwas Dennison's policy then to try to disengage Mr. Coven.

MR. FRANK: Your Honor, I move to strike that answer.

THE COURT: Strike it.

Q Do you recall how many conversations you had with Mr. Coven subsequent to your meeting with Mr. Gamarekian and Mr. Rega?

A To the best of my knowledge I had a few conversations the following week, or that week, in regard to what do we do now in regards to the remaining issue.

Q Do you recall specifically discussing the remaining issue with Mr. Coven?

A Yes, I do.

Q Do you recall when you discussed it?

A To the best of my knowledge it was around that time or just a few days later.

Q Do you recall what you said to him?

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A To the best of my knowledge I asked him what is our next step since the issue was closed.

Q Do you recall what his response was? 176a

A To the best of my knowledge he said he would try and help me find another underwriter.

THE COURT: This is Mr. Coven?

THE WITNESS: Yes, sir.

Q Was another underwriter ever found?

A No, sir.

Q Do you recall approximately how many shares were sold through your firm?

MR. JAFFE: Objection, your Honor. We have had that question asked several times.

THE COURT: Has it not?

MR. HEGHMANN: I believe the public record indicates 3 million.

THE COURT: Do you withdraw it?

MR. HEGHMANN: I withdraw it.

Q When the size of the original offering was originally determined what criteria was used to arrive at the size of the offering in terms of shares and dollar figure?

MR. FRANK: Objection, your Honor. I fail to see the materiality of this question.

THE COURT: I will allow it.

Go ahead. 177a

A What we had in mind to do as far as our expansion was concerned.

Q Did the fact that the maximum number of shares had not been sold have any effect upon the company?

MR. DAVIS: Objection, your Honor. It's a matter of public record. The distribution was contained in the prospectus, which is part of Plaintiff's Exhibit 1 in this case.

THE COURT: Overruled.

Go ahead.

A It curtained our expansion program, yes, sir.

Q Do you recall in what way it curtailed your expansion program?

A Yes, our application proceeds were reduced to 50 per cent of what we wanted to do. We had to curtail certain programs.

Q Mr. Bowes, in the spring of this year, in May and June of 1973, do you recall if you ever checked the market price for Dennison Personnel to see what the stock was trading at?

MR. FRANK: Objection, your Honor.

MR. JAFFE: Objection.

Q Isn't it a fact, Mr. Bowes, that it was Mr. Ziffer of the Seggos firm who kept you informed on a day to day basis as to how this registration was progressing?

A No, sir.

Q What did you talk about, then, every day?

A He told me how he was doing, that's all.

Q He, the underwriter?

A He told me how he, representing Stephens Jackson Seggos, was doing.

Q You knew that firm to be the managing underwriter, didn't you?

A Yes, sir.

Q Didn't he report to you the sales that were being--

MR. HECHMANN: Your Honor, I object to the word "manage." I don't think it has been established who was the managing underwriter.

MR. FRANK: Your Honor, the witness testified he knew he was the managing underwriter.

THE COURT: Do you?

THE WITNESS: No, sir; I don't.

Q Did you ever read the underwriting agreement between your firm and the Seggos firm?

A Yes, sir.

Q Do you have an independent recollection as to who

was referred to in that underwriting agreement as the managing underwriter?

A No, sir.

Q Was Carlton-Cambridge the managing underwriter to your knowledge?

A To my knowledge, I don't know.

Q Do you know whether there was a managing underwriter?

A To my knowledge, I did not know.

Q Do you recall anything about the underwriting agreement you signed?

A I recall the names involved.

Q That's all?

A Yes, sir.

Q You recall all those telephone conversations that you related. You recalled everything these people said as you have testified for the past two hours, but you recall nothing but the names of the people who signed the underwriting agreement?

A No, sir.

Q What else do you recall about the underwriting agreement?

A I recall I was told to sign it and forget about reading it.

Q Is that the truth to every piece of paper in this

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case?

180a

A No, sir.

Q So, you signed it and forgot about reading it?

A I didn't want to, but I did.

Q Now, sir, you sent a letter addressed to the transfer agent in this case, did you not?

A Yes, sir.

Q Did you read that letter when you signed it?

A To my knowledge, I did.

Q I am referring to Exhibit 10 in evidence where you said to the stock transfer company to issue 3,073,500 shares of Dennison's common stock for which you, meaning Dennison, have received full consideration as per prospectus. Do you remember signing that letter?

A Yes, sir.

Q Was it true?

A To my knowledge, it was.

Q Did you read the prospectus in this offering?

A Ye, sir.

Q When?

A Many times.

Q Did you read the registration statements prior to your signing them, prior to their filing with the Commission in this case?

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didn't ask for -- I didn't dictate the letter, no.

Q Did you or did you not ask for an extension of the underwriting agreement?

A I could have. All I was interested in at that time when those were delivered was the fact that I was under the impression that they were still selling the stock.

Q Did that impression continue through August of 1972?

A To the best of my recollection, no.

Q When did you lose that impression, sir?

A I lost it in the end of July.

Q You couldn't have lost it on or about July 18, 1972, could you?

A I don't know.

Q Isn't it a fact, sir, that you signed post-effective amendment number 1 withdrawing from registration two million nine hundred some odd thousand shares of Dennison Personnel stock?

A I don't know.

Q You don't know?

A No.

Q Mr. Bowes, I show you the signature and ask you whether or not that is your signature.

182a

A Yes, it is.

Q Do you see the date above your signature?

A The 17th day of July.

Q What year?

A 1972.

Q Now, sir, do you see the date on this?

A Yes.

Q What does it say there?

A July 18, 1972.

Q Who acknowledged receipt of that document?

A I believe I did.

Q No, whose receipt of that document is it?

A The Securities and Exchange Commission.

Q And, sir, may I call your attention to the first page of post-effective amendment number 1.

MR. FRANK: Your Honor, I am reading from that portion of Plaintiff's Exhibit 1 in evidence which is post-effective amendment number 1 to the registration statement filed with the Securities and Exchange Commission on July 18, 1972, receipted by the Commission on the same day, your Honor. The document is dated July 17, 1972, and was signed by the witness, as he so testified.

Q Sir, what does that date, will you read that and see if that refreshes your recollection as to having

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seen it before. 183a

A "The registrant, Dennison Personnel, Inc., by this post-effective amendment number 1, hereby deregisters 2,926,500 shares of its .001 par value common stock that remain unsold as at July 17, 1972, and 292,650 common stock purchase warrants and the shares of common stock par value at .001 underlying the said shares which were registered herein and which had not been sold, pursuant to Rule 478(a)."

Q Does that refresh your recollection, Mr. Bowes?

A No, sir.

Q Do you know the effect of that document on the ability of the underwriters to offer the stock of Dennison Personnel for sale to the purchasing public?

A As I stated before, I was told to sign and not read sometimes when I was in Mr. Coven's office. We had various arguments over that.

Q Isn't it a fact, sir, that that document was signed by you after you had told Mr. Coven that the stock was trading publicly?

A I believe that the stock was trading publicly.

Q No, no, answer my question. Isn't it a fact that that document was executed after the time you had told Mr. Coven that the stock was trading, that you had

heard the stock was trading? 184a

A Yes.

Q Now, sir, directing your attention to Plaintiff's Exhibit 11 and, more specifically, the last line of that document, do you see the date on that document?

A Yes.

Q What does it say, sir?

A July 24, 1972.

Q It says that this extension shall commence on that date, isn't that correct?

A That is correct.

Q Can You explain to me, sir, whether or not you informed Mr. Seggos that you hd signed the post-effective amendment number 1 withdrawing the balance of the stock from registration at the time you got that letter?

A I did not inform Mr. Seggos.

Q Why not?

A I never met Mr. Seggos.

Q Did you tell Mr. Ziffer?

A No, sir.

Q Did you tell anybody?

A To the best of my recollection, no.

Q In other words, sir, you signed the document withdrawing the registration 2,900,000 shares and you still

Q Let me direct your attention, sir, to the underwriting agreement as an exhibit to amendment No. 1 addressed to Lehman, Bartel & Company as representatives of the underwriters on the heading under Offer Dennison Personnel, and ask you whether you ever signed that underwriting agreement?

A I don't recall.

Q You don't recall?

A I don't recall.

Q Do you recall ever seeing it?

A I might have seen it, but I was not allowed to read it.

Q Were you allowed to read Exhibit 4?

A I don't know if I was allowed to read it or not.

Q You did sign it, though?

A That doesn't mean I was allowed to read it.

Q But you did sign it?

A Yes, sir.

THE COURT: What do you mean by "allowed to read it"?

A Mr. Coven and I had many discussions on his way of doing business, which was to throw agreements in front of me and say, "Sign it," after waiting three hours.

do. I said, "I would like to take this agreement back with me and read it before I sign it," and he thought that was highly unusual for somebody to question his integrity. And, therefore, I had to sign it or there would be no agreement.

186a

Q Why didn't you discharge Mr. Coven?

A Mr. Coven was doing his job.

Q So, then, you were satisfied with his services?

A I was satisfied with his services.

Q And you did not object to signing documents that he put in front of you, whether or not he let you read it?

A I did object. A few times I stormed out of his office.

Q Dissatisfied?

A - - - Dissatisfied.

Q But not dissatisfied enough to discharge him?

A No, sir.

Q Mr. Bowes, do you remember giving testimony under oath at the offices of Shearman & Sterling on October 30, 1973?

A Yes, sir.

Q And, sir, at that time and during that questioning do you recall this at page 79 --

MR. HEGHMANN: I would like to object. The witness has testified he does not recall if he saw the entire document. On the page bearing his signature I don't believe it says anything about de-registration. It merely states rules of the Commission.

187a

THE COURT: Sustained.

Q Sir, do you recall that I asked you if you signed post-effective amendment No. 1 after you had a discussion with Mr. Coven concerning the trading of the stock?

A Yes, sir.

Q Do you recall, sir, that you asked Mr. Coven to look into the trading of the stock?

A Yes, I did.

Q Isn't it a fact, sir, that Mr. Coven told you he had communicated with the SEC in Washington concerning this?

A He told me my associate; he did not tell me.

Q You knew that Mr. Coven called someone at Dennison Personnel and said that? Isn't that a fact?

A Yes.

Q Who is that associate, sir?

A George Kennedy.

Q After Mr. Kennedy told you about this telephone call from Mr. Coven, did you call Mr. Coven back?

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A Yes, I did.

Q Did Mr. Coven tell you that it was necessary to de-register the stock as to the remaining shares unsold?

A He could have. 188a

Q He could have?

A Yes.

THE COURT: Do you recall when that conversation occurred?

THE WITNESS: No, sir.

THE COURT: More or less?

THE WITNESS: I would fix it around July or August.

Q Sir, directing your attention to the fact that the closing at the bank was around June 21, 1972, and that you called Mr. Coven about the trading in the stock approximately the first week in July, does that help refresh your recollection as to when that telephone conversation with Mr. Coven took place concerning this de-registration that we have just discussed?

A No, sir.

Q Sir, isn't it a fact that Mr. Coven sent a copy of post-effective amendment No. 1 to your attorney, Mr. Greco, your personal attorney?

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A I don't recall.

Q You don't recall that? 189c

A No.

Q Sir, in your discussion with Mr. Coven did he tell you why he was filing post-effective amendment No. 1?

A No, sir.

Q He told you he was filing it, though?

A I don't know if he did or didn't.

Q You don't know if he told you he was de-registering the balance of the securities?

A No.

THE COURT: But you say you received word through George Kennedy that Mr. Coven had called and left word indicating that he had been in touch with the SEC?

THE WITNESS: Yes, sir.

THE COURT: And that it would be necessary to de-register 2,900,000 shares?

THE WITNESS: He indicated that to Mr. Kennedy.

THE COURT: And that occurred around July or August, 1972?

THE WITNESS: Yes, sir.

THE COURT: Anything further? If not, step down, sir.

(Witness excused.)

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Q Was Stevens, Jackson, Seggos formed prior to Dennison Personnel?

A It was.

Q Now, it is an undisputed fact that Dennision Personnel became effactive --

MR. FRANK: Objection, your Honor. I think Mr. Heghmann is testifying.

THE COURT: Frame your question a little differently, assuming.

Q Do you recall when Dennison Personnel became effective?

A No, I don't recall.

Q Did you subsequently call Mr. Coven?

A On what matter?

Q When was the first time you called him; did you call Mr. Coven?

A I called Mr. Coven after I had organized Stevens, Jackson, Seggos.

Q Did you speak with him?

A After five or six times I was able to get to him.

Q Do you recall what he said to you at that time?

A On the sixth time he told me to come over right away.

191a

Q Did you go to his office?

A I did.

THE COURT: Can you fix the approximate time?

THE WITNESS: The time was around 2 o'clock in the afternoon that I was at his office.

THE COURT: The approximate date would be helpful.

THE WITNESS: It must have been the late part of October. I don't recall, your Honor.

THE COURT: All right.

Q Did you go to his office alone?

A I did.

Q When you arrived, was anyone there?

A Where?

Q In Mr. Coven's office.

A There was another gentleman.

Q Did you know his name?

A Jerry Gayle.

THE COURT: Who?

THE WITNESS: Jerry Gayle.

Q At this meeting do you recall what was discussed?

A It was a discussion mainly about the program I had, which I needed an attorney to represent me, and I

192a

needed business.

Q Do you recall what Mr. Coven's response to this was?

A His response was that he would try to help me and he would give me underwritings and we will be working together.

Q Did he indicate to you any specific underwritings at that time?

A He had many underwritings in his office and he had an immediate one named Balance Computer, which in his opinion at the time he thought was a very good underwriting for me to start with.

MR. FRANK: I am going to move to strike after --

THE COURT: The last portion. Perhaps you can lead him just a bit.

MR. FRANK: Your Honor, we are having extreme difficulty at this back table not only hearing but understanding.

THE COURT: Try the microphone down here.

MR. JAFFE: If I could also ask if the witness would speak a little slower. I am taking notes and I just lose half of it.

THE COURT: If you will speak a trifle slower,

in that conversation?

193a

b2 A No.

Q What happened next in connection with Dennison Personnel?

MR. FRANK: I am going to move to strike that.

THE COURT: Yes.

Q What happened next subsequent to this conversation with Mr. Coven in connection with Dennison Personnel?

MR. FRANK: Again, same objection. He is really leading the witness. There is no mention by Mr. Seggos there was Dennison Personnel. He said Mr. Coven said he had one company that would be a cheap stock.

THE COURT: Go ahead.

Q During this conversation do you recall if Mr. Coven mentioned the name of this company?

A I don't recall.

Q It was during this conversation that you first heard of Dennison Personnel?

MR. JAFFE: Objection, your Honor.

THE COURT: Sustained.

Q Mr. Seggos, did you appear as a co-underwriter for the issue of Dennison Personnel?

A In the beginning it was intended that I was going to do the underwriting by myself.

Q Could you explain to me in your own words the background of your becoming the underwriter for Dennison Personnel?

A My capital was very low at the time and I needed an underwriting in order to stay in business. That was the reason I called Mr. Coven, to tell him, to see the possibility for the ten cents issue. Mr. Coven suggested that this particular company and the officials should be welcome to change the capitalization of Dennison Personnel, and since it was in filing the effective date could be very close.

Q You indicated that you were to be the sole underwriter?

A In the beginning, yes.

Q Do you recall approximately what time period we are speaking of now?

A 1973, the beginning of '73.

Q Mr. Seggos, assuming that Dennison Personnel became effective in 1972 --

MR. FRANK: Objection.

THE COURT: I will allow him to go ahead.

Q -- does that indicate to you that perhaps it was earlier than '72?

MR. JAFFE: Your Honor, I object to that. That

is like saying is one and one two; it has got to be two.

MR. BEIRNE: We are just wasting time here. It is an undisputed fact when the offering became effective.

THE COURT: Is it not undisputed? 195a

MR. FRANK: But the memory of the witness and his credibility --

THE COURT: Credibility is another matter. Recollection is still something else. Maybe one of us would have trouble relating events in occurrence of time.

MR. FRANK: Except this witness has testified he has an unusual type of memory, as you will find out on cross-examination.

THE COURT: At the end of his cross-examination we will know better whether he does or does not. Go ahead.

What is the date when the issue became effective?

MR. HECHMANN: April 26, 1972, your Honor.

THE COURT: There is agreement here that the issue became effective April 26, 1972. Do you wish to reconsider your last answer or two with reference to the matter of dates?

THE WITNESS: Are you referring to me, your Honor?

THE COURT: Yes.

THE WITNESS: I don't remember any dates, I have very bad memory in dates and names.

Q Did you have any type of arrangement with Mr. Coven? 196a

MR. FRANK: May we have a date fixed for this arrangement we are talking about?

Q Just to go back again, do you recall now more clearly what year was your first meeting with Mr. Coven at his office?

A In his office? In '71.

Q Now, at the time of that meeting did Mr. Coven become your attorney?

A Yes.

Q Did you and Mr. Coven have any type of arrangement?

A Could you be more specific?

Q What was Mr. Coven going to do for you?

A Mr. Coven was giving me underwritings and be my attorney.

Q Do you recall if he outlined what his services would consist of?

MR. FRANK: Objection, your Honor. I think we should move along. I fail to see the materiality unless it relates specifically to this complaint.

MR. HEGHMANN: What I would like to show is the course of dealing that existed between Mr. Seggos and

Mr. Coven that began at this first meeting and then encompassed several underwritings, including Dennison Personnel.

197a

THE COURT: Right.

Go ahead.

A Mr. Coven would give me underwritings of which I would have as an underwriter send the confirmations out, collect the money, have a closing, distribute the money.

Q Mr. Seggos, would you actually sell any of these stocks?

A No.

MR. FRANK: Objection, your Honor.

THE COURT: I will allow it.

MR. FRANK: We are talking about stocks and there are something like 2000 stocks on the New York Stock Exchange and I don't need to go over to the other regionals.

THE COURT: Go ahead.

Q Mr. Seggos, was Dennison Personnel one of the stocks that Mr. Coven brought to you?

A Yes.

Q Were you going to sell Dennison Personnel?

A No.

Q Who was going to sell Dennison Personnel?

A The office of Mr. Coven was syndicated, particularly Mr. Gayle was responsible for syndicating and selling the underwritings.

Q Now, again, since we have fixed the time of the meeting with Mr. Coven as now late '71, your initial contact with him, do you recall approximately what date or what time you first heard of Dennison personnel?

A Just before Christmas of '71.

Q Mr. Seggos, did you ever meet with any representatives of Dennison Personnel, Inc.?

A No.

Q Did you personally aid in the preparawtion of any filings?

MR. JAFFE: I object. These questions have been asked before and I object that these questions are now being asked again after counsel has had an opportunity to confer with his witness just prior to his testimony.

THE COURT: Overruled.

MR. HEGHMANN: Would the reporter please read the question.

(Question read.)

A No.

Q Did there come a time when Dennison Personnel became effective?

199a

A Yes, there was.

Q At the time it became effective, how many salesmen did Jackson- Stevens, Seggos have?

A One.

Q Did you sell any stock of Dennison Personnel?

A No.

Q Do you know if any of your employees did?

A Yes.

Q How many?

A In excess of 300,000 sales.

Q How many employees sold the stock?

A One.

Q Do you know who that was?

A Jules Ziffer.

THE COURT: Jules Ziffer?

THE WITNESS: Yes.

Q You indicated previously that Carlton-Cambridge was going to be your co-underwriter, is that correct?

MR. JAFFE: I object, your Honor. I don't think he ever indicated that at any time.

A Correct.

THE COURT: Go ahead.

Q Did you have any discussion with any representatives of Carlton-Cambridge?

200a

A No.

Q Did you personally attempt to sell any Dennison Personnel stock?

A No.

Q Do you know a Peter Kaplan?

A Yes.

Q Who was peter Kaplan?

A Peter Kaplan is president of Kaplan Securities.

Q In early 1972 do you recall discussing Dennison Personnel with Mr. Kaplan?

A Mr. Kaplan gave me a call and he told me --

MR. FRANK: Objection, your Honor.

MR. HEGHMANN: Your Honor, he hasn't gotten into any discussions with Mr. Kaplan as yet.

THE COURT: Sustained for the moment.

Q Mr. Seggos, did you discuss your participation in the sale of Dennison Personnel with Mr. Coven?

A No, my arrangement was that I was never to sell any stock in any offering that I was involved in.

Q Did you know who would sell the Dennison Personnel stock?

A Mr. Gayle was in charge of syndicating all issues coming out of Mr. Coven's office that I was involved.

Q Mr. Seggos, do you know Mr. Robert Levin?

201a

A Yes.

Q Can you tell the Court who Mr. Levin is?

A To my understanding he was an attorney, he is an attorney.

Q Do you recall if Mr. Levin had any connection with the Dennison Personnel offering?

A In the prospectus he was representing me.

Q Did you have any discussions with Mr. Levin concerning Dennison Personnel?

A No.

Q Was he, in fact, acting as your attorney in connection with this offering?

A My attorney was Mr. Coven.

Q Mr. Seggos, is Stevens, Jackson, Seggos still operating?

MR. FRANK: Objection. I don't think it is material whether it is still operating.

MR. HEGHMANN: I am merely laying a foundation for an entry into an area which I think is relevant to this lawsuit, your Honor.

THE COURT: All right, I will take it subject to connection.

A No, it is not.

Q What happened to Stevens, Jackson, Seggos?

A It ceased operating. I don't own it any more.

202a

Q Do you know who owns it?

A The books are in Mr. Coven's office.

Q Did you sell Stevens, Jackon, Seggos?

A I had an agreement to sell and signed an agreement that Carlton-Cambridge -- Stevens was actually taking over Carlton-Cambridge and by that fact 100 per cent control reverts to Carlton-Cambridge as owners.

Q Was there a signed agreement executed reflecting this transaction?

A It is.

MR. HEGHMANN: Your Honor, merely for the record, this document was received from Mr. Seggos after the stipulation and the numbering of the original exhibits was made. Therefore, I will ask that this be marked as Plaintiff's Exhibit No. 52 for identification.

THE COURT: There is a 52 listed, is there not? What is this, a memorandum dated what?

MR. HEGHMANN: This is an agreement, dated June 8, 1972, your Honor.

THE COURT: I have before me a listing of exhibits which indicates there is a 52 marked for identification, a memorandum, dated October 12, 1973.

far as accountancy is concerned, I was working in Switzerland; I studied extensively accountancy myself.

Q You never had any formal studies in accountancy?

A It depends on what you call formal studies.

Q For your securities business you say you went to the --

A You pass an examination; after you study you pass an examination.

Q How long is that study?

A Sorry?

Q How long was that study? How many days?

A It was approximately three weeks.

Q You have testified that it was your suggestion to change the capitalization of Dennison Personnel to 10 cents a share?

A No.

Q You did not?

A Capitalization is something else -- price.

Q It was your suggestion, then, to Mr. Coven, as I recall your testimony, that with respect to Dennison Personnel --

A Not with respect to Dennison Personnel. To bring it to his attention that 10 cents, 5 cents stocks was selling extremely well coming out of Utah.

Q Why did you make that suggestion? 204a

A Because in numerous underwritings in which I had appeared and after signing a dozen letters of intent, Mr. Coven and his associates never succeeded in selling one share of any underwriting, and I suggested because I was coming with very low capital then.

Q Isn't it a fact that during the period from approximately February to about some time in May you were out of the country, May of '72?

A Yes.

Q I am quoting you now from a previous deposition before the SEC, page 12 of 1/8/73:

I had some problems, family problems myself, the money situation, the money problem that I had, and left the country at this point, and since it was my attorney, Mr. Levin, I trusted him to go to take through the underwriting along with Mr. Ziffer. Mr. Ziffer was in complete charge of the offering.

Is that a true statement?

A I do correct that statement and that statement comes after a meeting I had between Mr. Coven, Levin, and another associate of Mr. Coven at his office. We had a meeting prior to coming down to the SEC, we had about an hour and a half to two hours discussion about me coming

down to the SEC and give a deposition, which Mr. Coven, of course, didn't know about that I appear at the SEC.

Q You were under oath at the SEC, weren't you?

A At the SEC, yes, I was. 205a

Q Was it explained to you by Mr. Hagbmann that any testimony you gave here today could be used against you in a subsequent proceeding brought by either the SEC or any other governmental agency?

A My statement is correct, sir. As far as Mr. Levin is concerned, he was my attorney. Mr. Covin told me that he was not really my attorney, Mr. Levin was my attorney. Later on after I had more time to think and as you read there before, having family problems and money problems, it was not a way out for me or anything, whatever you may think about. Mr. Coven told me that Mr. Levin was my attorney in this case. After thinking, Mr. Levin probably was my attorney, but my contact and the responsibility was with Mr. Coven.

Q You also continued on at that deposition and said you came to the United States in between, that during this period you were in Europe and then you came back.

Is that a correct statement?

A Correct.

Q "I didn't have too much to say to Ziffer or to

regarding the Dennison Personnel issue, didn't you?

206a

A Yes, I had made a decision, since --

Q I asked you the question did you have discussions with Mr. Ziffer regarding Dennison?

A I am trying to tell you.

Q Yes or no?

A I had delegated to Mr. Ziffer the Dennison Personnel issue.

Q And is it not so that when you came back from overseas that you were surprised to find that Mr. Ziffer had trouble selling it?

Yes or no, do you recall that?

A I was not surprised.

Q Did you tell him to call Mr. Peter Kaplan in order to, through Mr. Kaplan, sell some of the Dennison Personnel stock?

A No.

Q Now, I quote from your deposition:

"I said," -- this is on page 15 of the deposition on January 8, 1973.

"I said, then don't sell it until Gotham Securities give me a call. Mr. Peter Kaplan, whom I know, I know him from Stamford, never did any business with him, I know him through -- he has

the same dentist, that's the only connection we have, he asked me if he can buy this issue. I told him to see Ziffer. Ziffer sold him stock."

Is that a true statement? 207a

A It's a true statement.

Q In other words, you recommended to Mr. Kaplan --

A No, Mr. Kaplan gave me a call he was interested to buy Dennison Personnel stock and I said, "Ziffer, he's interested to buy stock so go ahead and sell him some stock."

Q So, to that extent you did participate in the issue?

A Yes, if you want to describe it that way.

Q Another question put to you by the Commission during that deposition was:

"Sir, I believe the minimum was sold. Were there indications made that the minimum was sold?"

This is at page 18.

"What was Your understanding concerning the selling, was there to be a closing after the minimum was sold, which was to be the final closing, or were they going to attempt to sell the rest of the stock?

Q So, on June 14th you appeared at the Commission as president of Stevens, Jackson, Seggos, correct? 208a

A Correct.

Q Subsequent to that June 14th, 1972 date, did you ever quit being president of Stevens, Jackson, Seggos?

A This --

Q Yes or no?

A I don't recall.

MR. JAFFE: No more questions, your Honor.

commission, because he needed the money.

Q When did your first conversation with Mr. Ziffer concerning the sale of Dennison by the Seggos firm take place?

A Mr. Ziffer was an associate of mine; he was in the same office and he knew everything about the business of the firm, and he was in most of the decision making.

Q Isn't it a fact, sir, that you as the president of the firm believed that your principal duty was to delegate authority?

A It is.

Q Is it also a fact that you delegated the complete authority insofar as the Dennison underwriting is concerned to Mr. Ziffer?

A After discussion with Mr. Coven.

Q But you did delegate it?

A I did delegate it because I had confidance in Mr. Coven's ability of coming through with it.

Q Can you tell me, sir, how many shares of Dennison Personnel, Inc. common stock were confirmed out by the Stevens, Jackson & Segoss firm?

A I know how many shares actually were sold.

Q I didn't ask you that, sir. I asked you how many shares were confirmed out by the Stevens, Jackson &

A Yes, so far as the 11 Broadway office was concerned.

219a

Q Was that the trading office?

A Yes.

Q Was the underwriting of Dennison Personnel handled through the 11 Broadway office?

A From both offices.

Q From both offices?

A Yes.

Q Where were the blotters kept of purchases and sales with reference to the Dennison Personnel underwriting?

A You will have to ask Mr. Ziffer.

Q You don't know anything about where the records were kept?

A No.

Q Did you between April 26, 1972, and July 30, 1972, ever furnish the SEC any reports signed by you as president of Stevens, Jackson & Seggos, Incorporated?

A Yes.

Q What reports did you furnish to the Commission, sir?

A The reports prepared by the accountant of Mr. Coven.

deliver to the Securities and Exchange Commission.

Q A final trial balance? 211a

A It was prepared by Mr. Goldman.

Q What was the date of that?

A Mr. Goldman spent quite a time at Stevens, Jackson & Seggos.

Q In your office?

A In my office.

Q And he was going over the books and records?

A Yes.

Q Did those books and records include the underwriting commission and the underwriting records in connection with Dennison Personnel?

A Correct. Also, he was working at the same time. He couldn't balance the books and he had to take them and he was working.

Q Mr. Goldman took the books?

A Yes.

Q When did he take the books?

A You will have to ask Mr. Lian.

Q I am asking you. Do you know?

A No.

Q Were you there when he took them?

A No.

Rega. He indicated Mr. Rega signed the agreement on behalf of Carlton and all we are doing is this witness is --

THE COURT: Sustained. 212a

MR. JAFFE: Thank you.

THE COURT: Move along to your next line.

Q Mr. Seggos, you testified that you saw that the orders for the stock of Dennison Personnel were not coming in and that, therefore, you wanted a co-underwriter, is that correct?

A No, I mentioned the fact that it was not selling. I was hoping a lot on Dennison Personnel to be sold by Mr. Coven's associates. At this point they brought in Carlton-Cambridge.

Q They brought in Carlton-Cambridge?

A They told me Carlton-Cambridge was coming.

Q To your knowledge, sir, did you ever see a preliminary prospectus of Dennison Personnel, Inc. where Stevens, Jackson, Seggos, Inc. was the sole underwriter on the cover?

A No.

Q Sir, do you know --

A I don't recall.

Q You don't recall?

A No.

213a

Q Isn't it a fact, sir, tht there never was such a preliminary prospectus?

A There were many prospectuses coming to my office On which underwriting?

Q Let's talk about Dennison Personnel.

Was there ever a preliminary prospectus offering 6 million shares of Dennison Personnel stock wherein the name Carlton-Cambridge & So. and Stevens, Jackson, Seggos, Inc. did not appear together?

A I haven't seen a prospectus with my name alone.

Q So then, sir, at the time the first filing went into the Securities & Exchange Commission wherein Stevens, Jackson, Seggos, Inc. were shown as an underwrite of the Dennison stock, that filing included Carlton-Cambridge as a co-underwriter, did it not?

A No. I have seen a prospectus, which is a different thing from preparing a prospectus, and the preparation of the prospectus in the beginning it was supposed to be me alone.

Q Did you eder see --

MR. JAFFE: Your Honor, again may I object. the witness has answered. There is an exhibit, Plaintiff's Exhibit 1, which has all the filings at the Commission which is in evidence.

THE COURT: Overruled.

Go ahead. He has answered the question, however.

214a

Q Do you have a copy of that prospectus that showed Stevens, Jackson, Seggos, Inc. alone?

A I don't have any papers.

MR. HEGHMANN: I would like to object, your Honor. I believe his answer was that there is a difference between preparation and filing. I believe at the time --

THE COURT: Referring to documents in preparation, do you have a copy of any such documents?

THE WITNESS: No, I don't, your Honor.

Q Did you ever use any of those preparatory documents as selling material for the purpose of obtaining orders for the stock of Dennison Personnel?

A I was not responsible for selling any stock.

THE COURT: Does that mean the answer is no?

THE WITNESS: No.

Q So, if you were not responsible for selling any stock and the orders didn't come in, you had no responsibility for that situation, did you?

A Not correct.

Q Did you tell Mr. Coven that the orders weren't

coming in?

A I did. 215a

Q Well, sir, you were away --

A Not orders, you've rephrased it to indications.

Q Indications of interest, you mean?

A Correct.

Q Well, sir, did you ever get an indication of interest from Gotham Securities?

A Over the telephone after it was effective.

Q After it was effective?

A After the party.

Q Did Gotham tell you that they were sent by Mr. Coven?

Q You knew the president of Gotham, Peter Kaplan, didn't you?

A Correct.

Q Did you ever get an indication from Albert & McGuire, a brokerage firm in Philadelphia?

A I understand --

Q Did you get one, sir?

A I haven't seen one.

Q You never saw one.

Isn't it a fact, sir, that the Seggos firm confirmed 50,000 shares to Albert & McGuire in Philadelphia,

Pennsylvania?

216a

A That's what I understand.

Q And, sir, did they tell you that Mr. Coven sent them in?

A Yes, sir.

Q Albert & McGuire told you that?

A No, some representative of theirs named Dorsey, which was approached by Mr. Gayle, which was syndicating Dennison Personnel, but I didn't speak to them.

Q Somebody else told you what someone else said?

A Yes, Mr. Ziffer.

Q How about G & L Securities, do you know them?

A Mr. --

Q Do you know them, sir?

A No.

Q Did you ever do business with them?

A I probably did.

Q They bought 100,000 shares of Dennison Personnel stock, didn't they?

A I haven't looked.

Q You haven't looked?

A No.

Q You knew you were testifying in this case, didn't you?

me to conduct this meeting and I was asked to do so by Charles Pardee, who is the branch chief in corporation finance who was handling the registration.

Q Was a due diligence meeting held with respect to Dennison Personnel?

217a

A Yes, it was.

Q Do you remember the date of that due diligence meeting?

A April 25, 1972.

Q Do you remember who was present at that meeting?

A Yes, for the issuer the president of the firm, a Mr. Bowes, and his public relations officer, a Mr. George Kennedy. In addition were present his counsel, Mr. Coven and Mr. Coven's associate, Mr. Ackermann. In addition, there was a representative from Stevens, Jackson & Seggos by the name of Jules Ziffer.

Representing the other underwriter, Carlton Cambridge, were Mr. Joseph Rega and Mr. George Santoriello. The counsel for Mr. Rega was Mr. Robert B. Levin.

I believe that was the total number of people from the outside. From the staff, in addition to myself, Mr. Michael Goldberg was in attendance. Mr. Goldberg was the branch chief of the Division of Small Issues.

Q Of the New York Regional office?

A Yes. 218a

Q Do you recall what occurred at that meeting? What was said by the various parties?

A Oh, yes. We reviewed the prospectus, questioned the parties as to indications of interest received for the offering. They indicated that none had been received. I reviewed the doctrine of suitability with the underwriters: I reviewed various other doctrines concerning the offering of the stock. I questioned the underwriters when the closing would occur. They indicated to me that a mini closing might occur, since it was a mini-maxi offering.

In addition, I asked them whether they would ship stock certificates as soon as possible after the closing. They indicated they would. In addition, I questioned the underwriters as to when they would ship the prospectuses to the prospective customers. Upon agreement to the staff's suggestion, they indicated they would send the prospectuses 48 hours prior to the mailing of the confirmations to a prospective customer.

They agreed to use the same guide lines if there were any selling group members involved in this offering.

THE COURT: On this occasion I am going to sustain the objection. 219a

Q Mr. Glusband, did there come a time when the Commission investigated the Dennison personnel offer?

A Yes, sir.

Q Do you remember, did you participate in that investigation?

A Yes, I did.

Q Do you remember approximately when your participation in that investigation began?

A As I indicated to you a few moments ago, I checked with the market makers as to their participation in the after market transactions. While that was not during the period of investigation that was perhaps the initiation of the preliminary investigation. I don't think an in depth investigation began until July of 1972.

Q Once an investigation began did you request certain documents from Carlton-Cambridge, one of the underwriters in the offering?

A Yes, I did.

Q Did you request among other things order tickets for the period of approximately early June up to June 20, 1972?

A Yes, I did.

Q Did you receive those?

A I am not sure if I received it on June 2 but it was stamped to our office on June 2.

Q Was it addressed to you? 220a

A Yes.

Q Did you ever receive it?

A Yes.

Q When?

A I don't know.

Q You possibly received it on or about June 2?

A On or about.

Q And yet you had material coming to you indicating that the sales were going on and you saw trading take place in Dennison Personnel stock?

A Yes.

Q And you were responsible, you conducted the due diligence with respect to the whole conduct of the Dennison Personnel issue, weren't you?

A Yes.

Q You were told about Carlton-Cambridge not to worry about it?

A Yes.

Q You were told about Seggos, they could possibly be in trouble?

A I was told that the prior firm had financial problems.

problem. I don't think it's appropriate at this time and he should be precluded from this line. 221a

THE COURT: I will sustain the objection.

Q Mr. Glusband, did anybody at the meeting indicate to you that it would be difficult or impossible to carry out any of the guide lines that you suggested?

MR. JAFFE: I object for the same reasons given before by myself and by co-counsel, Mr. Davis.

THE COURT: I will alow that.

A No, sir.

Q Did anyone at the meeting tell you that there was, in fact, a $100 minimum purchase requirement?

A No, sir.

Q Mr. Glusband, you testified that it came to your attention some time in June that quotations had been entered in the Pink Sheets for Dennison on or about June 2, is that correct?

A Yes, sir.

Q And did this come to your attention promptly on June 2 or was it some time later?

A I believe it was a few days later.

Q Was there any reason why you did not immediately conclude that such after market activity was improper?

A No. In fact, the underwriters themselves had not appeared in the Pink Sheets until the 16th of June and it's entirely legal within the purview of the securities laws for a when issued market to take place prior to the completion of an offering. There was no indicia of any violations from the mere appearance in the Pink Sheets of the Dennison Personnel.

Q And you were unable to conclude at that particular point in time that violations had occurred in connection with this offering, is that correct?

A Other than the price movement, no.

MR. BEIRNE: No further questions.

THE COURT: Anything further of this witness?

MR. JAFFE: Nothing further at this time. However, your Honor did limit my cross-examination as to certain things.

I ask the SEC to have the man available. Your Honor also indicated about a subpoena but I believe he is readily available if the Court can put him on order.

THE COURT: Mr. Beirne, I gather that he will be available?

MR. BEIRNE: That is agreeable to us. In fact, we have just now received additional documents from Carlton-Cambridge and once we have analyzed those it

Q Did there come a time when it was contemplated that Carlton-Cambridge would only sell half the issue?

A I think it would go back to earlier discussions that myself and Mr. Gamerikian had concerning whether or not we would participate with Stevens, Jackson & Seggos in this issue. We were led to believe that approximately half the situations or half the deal would be marketed and if we did choose to participate the remaining responsibility would be to bring ours or a number of other firms together to sell the remaining half.

THE COURT: Does that mean that you are saying that as far as Carlton-Cambridge was concerned you were undertaking a commitment with respect to a full half, that is 3 million shares?

THE WITNESS: As a general guide line, yes, your Honor.

THE COURT: And that as to the remainder it was contemplated that Stevens, Jackson and possibly some others form a selling group, would direct their energies towards the sale of the remaining 3 million, is that a correct statement of what you are saying?

THE WITNESS: Yes. It's basically generally the way it's done in the industry. You have a managing underwriter who will attempt to put together a number of

other dealers to help market the issue.

Q Who was the managing underwriter in connection with Dennison Personnel?

A Stevens, Jackson, Seggos.

Q Did you know approximately how large Stevens, Jackson, Seggos was?

A No, I did not.

Q Mr. Rega, did you attend the due diligence meeting held at the Securities & Exchange Commission?

A Yes, I did.

Q At that time did you meet with any representatives of the issuer?

A Yes, I did.

Q Did you discuss the Carlton-Cambridge participation in the offering with them?

A Well, we had general discussions. Specifically what we discussed, it would be difficult to relate to the Court at this time.

Q What representatives of the issuer did you meet?

A The president, Mr. Gerry Bowes, and the vice-president, Mr. George Kennedy.

Q Did you meet with any representatives of Stevens, Jackson, Seggos?

225a

A No, it was not.

Q How many branch offices dis Carlton-Cambridge have at that time, Mr. Rega?

A Five, I believe.

Q Do you recall approximately how many salesmen?

A Approximately 100.

Q Were they all full-time?

A The majority of them were full time.

Q Mr. Rega, do you know what the term allocations means?

A I believe I do.

Q In connection with new issues was it a practice of Carlton-Cambridge to make allocations?

MR. DAVIS: At this time can we ask that Mr. Heghmann explain to us what the term allocations mean to him?

THE COURT: No, but Mr. Heghmann may ask the witness what it means to him.

MR. DERFNER: Based upon our discussion this morning that we would adjourn at 5 o'clock I did make a commitment for 5.30.

THE COURT: You have a train?

MR. DERFNER: I have an appointment at 5.30.

THE COURT: We are going to adjourn at five.

It's about one or two minutes to five. 226a

Go ahead.

Q In connection with new issues can you explain to the Court what allocations were?

A It would be the number of shares --

MR. JAFFE: I object. New issues in general -- we are here on Dennison Personnel. Is he being qualified as a witness on new issues?

THE COURT: You understand that the question is ultimately directed to Dennison, do you not?

THE WITNESS: I am not sure that I do.

THE COURT: Consider that the case.

I gather that the question that is being put to you is what did you understand allocations to be or to mean at or about this period of March-April, thereabouts, 1972, is that the question?

MR. HEGHMANN: Yes, your Honor.

MR. JAFFE: If they want to qualify him as an expert in the securities market I am perfectly willing to --

THE COURT: I don't think the question is being put to get his expert opinion, is that so?

MR. HEGHMANN: No, your Honor.

THE COURT: Let's see what the answer is.

Go ahead, sir.

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Q Mr. Rega, going back to February, March and April of 1972 what did the term allocations mean to you in connection with Carlton-Cambridge?

227a

A In connection with Carlton-Cambridge?

Q And new issues.

A It is a term generally used in the industry and we use it as well to concern itself with the number of shares which would be given either an individual office, an individual registered representative, as the idea behind that was to assure a maximum distribution and also to help market the issue among our entire organization.

Q Were allocations made in connection with Dennison Personnel?

A Yes, there were general allocations made on an office basis.

Q Were there allocations made to each registered representative?

A Yes, I would think there were.

Q What form did these allocations take?

A I don't know if I understand that. If I understand that. If I understand it, it would mean a number of shares allotted or given a specific individual or a specific registered representative.

Q Would this allocation be a maximum number of

shares that a branch office or a registered representative could sell? 228a

A No, I would say that it was used as a general guide line. Should an individual RR receive a certain allocation and he found it difficult to market there would be no stipulation that he had to market a certain number of shares.

By the same token, if he requested from his manager additional shares, if those shares were available and the account in which he was interested in marketing those shares to met the suitability requirements, inall probability he would have received additional shares.

Q But before he went over his allocation he would have to ask the branch manager, is that correct?

A As a general rule, yes.

Q I believe you indicated that there were a specific number of shares that were allocated, is that correct?

A Either way. It could have been shares or dollar amounts. It amounts to the same thing.

Q In connection with Dennisen Personnel how many shares were allocated throughout the entire organization?

A I can't specifically recall the number of shares allocated. I can recall the approximate number

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of shares that were billed out to customers. 229a

Q When were these allocations made?

A After the effective date, after April 26, 1972.

MR. JAFFE: I object.

THE COURT: I will sustain the objection for the moment and we will adjourn until tomorrow morning.

We will adjourn until 10 o'clock tomorrow and proceed until about 4.20.

(Adjourned to Tuesday, January 8, 1974, at 10.00 o'clock a.m.)

Q Were registered representatives at Carlton-Cambridge permitted to use their discretion to purchase new issues for their accounts?

A I couldn't specifically recall whether or not a discretionary account had participated in Dennison Personnel. However, the number of discretionary accounts in the firm was very small, probably less than twenty.

So it would be a small amount in relation to the number of shares sold.

Q You indicated that indications of interest were submitted, is that correct?

A That is correct.

Q What effect did the indication of interest have?

A It had the effect of showing a customer had indicated some interest in the possible purchase of Dennison Personnel and the final determination would be made by that customer upon receipt of the prospectus.

Q Was the submission of the indication considered in any way as a binding commitment on the part of the customer?

A No, it was not.

Q Mr. Rega, in all instances were customers

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Q Mr. Rega, we have discussed suitability as to customers who purchased Dennison Personnel, is that correct, the criteria?

A Correct. 231c

Q What did you do as president of the firm to supervise the registered representatives and to see that the criteria was met?

A The final analysis assigned all new account cards and approved all indications of interest that would come in from new accounts so that all of those documents would come across my desk each evening.

If I had a question as to whether or not a particular situation was suitable for a customer I would question it at that time.

Q In connection with a new account what information would you have in front of you as to the suitability of Dennison for that customer?

MR. DAVIS: That has been asked and answered, your Honor.

THE COURT: Sustained.

Q Mr. Rega, in reviewing the new account cards which contained purchase orders for Dennison Personnel in the original issue how did you make your judgment as to whether or not this card or account appeared suitable for

232a

this issue?

MR. JAFFE: I object. We are calling here now for opinions as opposed to factual information.

THE COURT: I will take an offer of proof and I would like you to relate it to the complaint.

MR. HEGHMANN: Your Honor, we have alleged that the stock was sold to customers for whom it was not suitable. Mr. Rega was the president of the firm and was responsible for supervision of the sales force.

THE COURT: That particular allegations appears where in the complaint?

I see it.

(Question read.)

THE COURT: Overruled.

A Based on the information that was contained in both that new account card and in the indication card.

Q In connection with the Dennison Personnel issue were there any minimum standards set for the customers who would purchase the stocks such as minimum income level?

A Not as I recall, no.

Q Was there a minimum level as far as other stock holdings?

MR. JAFFE: Your Honor, I object to this line because, again, I do not know of any rule requirement tha

minimum standards be set in this type of stock issue.

THE COURT: I will allow it. 233a

A I think to set up specific guide lines is difficult in suitability. I think you use all of the information gathered from an individual customer and then you have to make a decision based on your past experience.

I don't think you can specifically set up rules to save such-and-such an income level or such-and-such an emotional makeup. It's a combination of all those things. In the final analysis suitability is a judgment decision.

Q Perhaps if I state it another way, Mr. Rega.

You were reviewing these order tickets on a daily basis, is that correct?

MR. JAFFE: Your Honor, he is arguing with the witness. This is his witness. He has given his answer on the method on which he takes the facts and now we have counsel attempting to argue on this method of choice.

THE COURT: Overruled.

A Would you repeat the question?

(Question read.)

A That is correct.



THE WITNESS: Not after May 29, no.

Q Why did you stop selling the new issue after May 29?

234a

A I think I indicated previously that we had indications of interest for in excess of 3-1/2 million shares. We began to get cancellations.

Past business experience indicated that after the second or third week of marketing a new issue that the issue begins to become cold, salesmen look for other things to do. It becomes increasingly more difficult to market the issue. Also at that time in addition to us receiving many indications of interest that we had gotten to a point where we had peaked evidently by our own records as to how many shares, using our best efforts, we would be able to sell.

The cancellations began to come in. We had also at that time had information that Stevens, Jackson, Seggos and their selling group was having difficulty in marketing the issue also and in the final analysis would only market in the area of some 300,000 shares whereas, I believe, yesterday I had testified that our indication was when we were asked to participate, it was based on the selling group they were putting together, we would be able to market approximately 3 million shares and they were

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A My records.

Q Mr. Rega, did you attend the meeting held at the Republic National Bank on June 12th?

A Yes, I did. 235a

Q Did you go alone?

A I don't know.

Q Were you accompanied by anyone else at the closing?

A No, I went by myself.

Q Can you describe to the court what occurred at this meeting?

A There was myself, a representative of Stevens, Jackson, Seggos, the principals of Dennison Personnel, and various attorneys were there. We reviewed the various closing documents. I believe there was some question as to when the certificates would be delivered, and the bank ultimately took the position of holding all moneys and all documents in escrow until such time as the certificates were delivered and had an opportunity to be checked and verified before they would disburse any of the moneys. I don't believe any moneys were disbursed at that particular gathering.

Q Do you recall how much money was in the escrow account on June 12th or at the time of the meeting?

A Approximately $263,000.

Q Did you bring anything with you when you went to

the closing?

A Yes.

236a

Q To the meeting?

A Yes.

Q What did you bring?

A A check.

Q Do you recall the size of this check?

A Approximately $31,000.

Q What did this check represent?

A It represented the final payment of customers who had purchased stock from Carlton-Cambridge, less our commissions.

Q Do you recall any discussion at that meeting as to why all of the money had not been placed in escrow?

A Not specifically, no.

Q Were you asked to make any representations concerning the difference between what was deposited and the $300,000?

A Yes, I believe I was.

Q Do you recall who made this request?

A I believe it was the bank.

Q Who represented the bank at this meeting?

A I don't remember the gentleman's name.

Q Well, when whoever made this request made it

what did you do? 237a

A I believe I signed a letter to the effect that we had already deducted our commissions.

MR. HEGHMANN: I will ask the clerk to mark this as Plaintiff's Exhibit 18 for identification, a one page document which appears to be a letter to the Republic National Bank from Carlton-Cambridge.

(Plaintiff's Exhibit 18 marked for identification.)

xx

Q I will now hand you what has been marked Plaintiff's Exhibit 18 for identification and ask you to examine it.

Do you recognize this document?

A Yes, I do.

Q Can you tell the court what it is?

A It is the letter that I just referred to.

Q When was this letter written, Mr. Rega?

A June 12, 1972.

Q Where was it written?

A At the Republic National Bank.

Q Is it fair to state that this is the accurate that the representative of the bank asked you to give cerning the issue?

A Would you repeat the question, please?

Q Is it fair to state that this was the assurance that the bank requested you to give?

A I don't know that I understand the question.

Q Why was this letter written?

A To indicate that we had, in fact, taken all our discounts and commissions or had deducted them from the last check that we brought to the gathering and that no further checks were to be written to us from the escrow account at the time funds were to be disbursed.

MR. HEGHMANN: I move that Plaintiff's Exhibit 18 be placed in evidence.

THE COURT: Received.

(Plaintiff's Exhibit 18 received in evidence.)

Q Mr. Rega, you have indicated that you brought a check with you to the closing? Is that correct?

A That is correct.

Q That this check represented subscriber funds less Carlton-Cambridge's commission? Is that correct?

A Correct.

Q When had the subscriber funds been received by Carlton-Cambridge?

A I have no way of knowing or recalling.

Q Well, prior to June 12th, then, Mr. Rega, was there enough money to close the issue?

purposes, Mr. Seifer?

notified all the principals involved.

The Dennison Personnel closing was the first closing I ever attended, and I said very little, I sat and observed what occurred, to learn what occurs at a closing. I know we had general discussions. Specifically who I spoke to and what I said at that gathering I could not recall.

Q Mr. Rega, at the time of this meeting did you know if anyone was still selling the Dennison Personnel issue?

A Specifically, no. You are asking for an understanding or opinion. It was my understanding. I don't know if anyone else was selling it.

Q At this meeting do you recall any discussions with a representative of Stevens Jackson & Seggos?

A No, I do not.

Q Do you recall if Stevens Jackson Seggos was present and represented?

A Yes.

MR. DEUFNER: I object to as having been asked and answered.

THE COURT: Yes. The testimony was that Mr. Ziffer was there.

Q Mr. Rega, did there come when Carlton-Cambridge

entered into an agreement to purchase or merge with Stevens Jackson Seggos?

239a

A No agreement was ever consummated.

THE COURT: That was not the question.

Read the question.

(Question read.)

A An agreement was signed and placed in escrow pending final decision as to whether or not we were going to close, to consummate that particular merger or not.

Q I will show you Plaintiff's Exhibit 52 in evidence. Turning to the last page I will ask you, is that your signature?

A Yes, it is.

MR. JAFFE: Since we're going to talk about the document, counsel just put it in front of his face and walked away with it.

MR. HEGHMANN: Let the record indicate that I am handing the document to the witness.

THE COURT: Do you recognize that, sir?

THE WITNESS: Yes, sir.

THE COURT: Is it marked?

MR. HEGHMANN: Yes. It's 52 in evidence.

Q Mr. Rega, is that the agreement you have been referring to?

A Yes, it is.

240a

Q Mr. Rega, could you tell the court the circumstances surrounding the signing of that document?

A Mr. Coven had known or become aware of the fact that Carlton-Cambridge from time to time looked for potential acquisitions. He was also aware of the fact that I possibly was looking to leave Carlton-Cambridge, and Stevens Jackson Seggos might be available for purchase. We met one evening, discussed it, signed this agreement in escrow primarily because Mr. Seggos is a pretty traveled individual, and more often than not he was nowhere or out of the country or traveling, and we signed this agreement in escrow pending, really, a complete check into the firm of Stevens Jackson Seggos before any final merger would have been contemplated. Subsequently it turned out that it was not exactly what I wanted, and no agreement was ever consummated.

Q Who first approached whom with the idea of a merger or a sale?

A It was not a secret around the street or around the industry and that the two situations I outlined before existed, that we were looking for potential acquisitions, and I also was interested if possible leaving the firm. We went so far as to advertise or put ads in the papers

Q Mr. Rega, Plaintiff's Exhibit 52 in evidence at page 2, section 1.02a states the consideration to be paid to Seggos is in the sum of $10,000 by Joseph Rega, Jr., endorsed by a 180-day promissory note, the receipt of which is acknowledged. 241a

MR. DAVIS: Excuse me, your Honor. I believe he read that word"evidenced" rather than "endorsed," just for the sake of clarity.

THE COURT: Is that correct?

MR. HEGEMANN: Yes.

MR. DAVIS: Thank you, sir.

Q Mr. Rega, you may examine the document. Do you see the section I refer to?

A Yes, I do.

Q Mr. Rega, what were you buying for $10,000?

MR. JAFFE: Objection. This is his witness, your Honor.

THE COURT: He is permitted to ask that. Go ahead.

A I had not time to ascertain what I was buying. That is why this agreement was signed, as I stated before, and placed in escrow pending a thorough investigation of the firm by myself. I did not consider it as binding in any way, shape or form.

Q Does that document indicate in any part that

it is not binding?

MR. DERFNER: Objection. It calls for a legal conclusion that this witness is not competent to testify to.

242a

THE COURT: He can tell us whether or not there is any condition there which he believes, rightly or wrongly, contains that provision.

MR. JAFFE: I object. The document speaks for itself. The witness should not be asked to interpret a document.

THE COURT: I am going to allow the answer.

MR. DAVIS: From the witness' testimony, he speaks of placing the document in escrow, which may indicate there may be further documents of which this document is one. This may be an incomplete document to give to the witness.

THE COURT: We are all free to find that out by asking questions. Go ahead, Mr. Hegmann.

THE WITNESS: Repeat the question, please.

(Question read)

A This specific document, no.

Q Were there other documents?

A Yes, I believe there was an escrow letter to the effect that should I not find the firm satisfactory or should I find any particular problems, regulatorywise

or otherwise, that this would not be binding.

Q Was there a promissory note endorsed?

A Yes. 243a

Q Who prepared this agreement, Mr. Rega?

A Mr. Coven.

Q Were you represented by counsel in these negotia-tions?

A No, I was not.

Q Do you know who Mr. Coven was representing?

A No, I do not.

Q Do you recall where the document was signed?

A In Mr. Coven's office.

Q At that time do you recall who was present?

A Yes, I believe I do.

Q Can you tell us who was present?

A Myself, Mr. Seggos and Mr. Coven.

Q You have indicated that there was another document, a letter, was it, in escrow? Could you describe the third document? We have this agreement, Plaintiff's Exhibit 52, and a promissory note. Now, was there another document?

A Yes, I believe there was an escrow letter.

Q Do you have a copy of that letter?

A Not with me, no.

Q Do you know where one can be found?

A Yes, I believe so.

Q Can you tell the Court where?

A My records. 244a

Q Will you produce it?

A If counsel advises me of that, yes.

THE COURT: Who signed that letter?

THE WITNESS: I don't recall, your Honor.

THE COURT: Do you recall whether you did?

THE WITNESS: Yes, I believe I did.

THE COURT: Do you recall whether Mr. Seggos did?

THE WITNESS: I believe he did but I cannot say for sure without looking at the document.

Q Who prepared that letter, Mr. Rega?

A Mr. Coven.

Q Were these documents held in escrow?

A Yes, they were.

Q And who was the escrow with?

A Mr. Coven.

Q Did Mr. Coven hold all of the documents?

A Yes, he did.

Q Was the agreement ever consummated?

A No, sir.

Q Was it terminated?

A I don't understand that.

Q At some point in time did you make a decision not to acquire Stevens, Jackson, Seggos? 245a

A Yes, we did.

Q Do you recall when that was?

A Almost immediately upon signing the document.

Q Can you tell us why you decided not to acquire Stevens, Jackson, Seggos?

A One reason was the fact that they were having some problems regulatory-wise which, of course, I didn't want to get involved with.

Also, I testified previously that not only was Carlton-Cambridge looking for acquisitions but I was also considering the possibility of leaving the firm altogether and after weighing all of the facts ultimately what happened is that I chose to go the route which I did and leave Carlton-Cambridge altogether and set up my own operation.

Q Did you discuss the reason you decided not to consummate the agreement with Mr. Coven?

A As I recall not in any great detail other than the fact I did not want to go through with it and I had chosen to go the other route in my own mind, that route being to leave Carlton altogether and have my own firm.

THE COURT: Did you get your note back?

246a

THE WITNESS: Yes, I did.

Q Mr. Rega, at the time of this agreement did you learn what the financial condition of Stevens, Jackson, Seggos was?

A I never had the opportunity to take the time to investigate the company. I made my decision that I was no longer interested and did not pursue it any further.

Q Did you determine whether or not Stevens, Jackson, Seggos was in operation at the time of this agreement?

A I did not make any determination.

Q At that time was it your intention to leave Carlton-Cambridge?

MR. DERFNER: Can we fix the time?

Q At the time of this agreement.

At the time of the signing of this agreement was it your intention to leave Carlton-Cambridge?

A I was considering that possibility, yes.

Q Concerning this agreement was there any representative of the issuer involved at any time in these transactions or in this transaction?

A No, sir.

Q Do you recall if you at any time informed a representative of the issuer that you were acquiring or

considering acquiring Stevens, Jackson, Seggos?

247a

A No, I did not.

MR. JAFFE: Your Honor, can we fix the date of this negative --

THE COURT: He said at any time.

MR. JAFFE: All right. I wasn't sure if he said every time any time he asked the question.

Q Mr. Rega, did there come a time when an after-market opened for Dennison Personnel stock?

A Yes.

Q Do you recall approximately when the after market opened?

A My best recollection would be on or about June 2nd or 3rd.

Q Do you understand what I mean when I say after market? -- I will rephrase it.

What do you mean by an after market?

A I noticed in the Pink Sheets or the quotation sheets that there were wholesale traders who had placed their name in the Pink Sheets indicating that they were willing to trade the issue.

Q Do you recall who those traders were?

MR. JAFFE: We have an exhibit which has been filed by the Government in this matter indicating excerpts

248a

Would you show me, sir, how you arrived at that conclusion from 36B?

THE WITNESS: Trading ledgers are posted on a settlement date which is five business days after the actual trade date.

THE COURT: That means then that if we looked at June 10th we would be able to get the answer, is that correct?

MR. HECHMANN: No, your Honor. It's five business days plus two days for the weekend. You would add seven days.

THE COURT: If you look at June 12 then?

MR. HECHMANN: Yes.

Q Is that correct, Mr. Rega?

A That is correct. It's a combination of unsolicited and solicited trades.

Q Mr. Rega, do you review the order tickets or did you review the order tickets for Dennison Personnel?

A I review all of the order tickets of the firm at the end of every day.

Q This would include the order tickets for Dennison Personnel?

A That is correct.

Q During this period, the early June period of 1972?

249a

A That is correct.

Q Mr. Rega, what information concerning the success of the sale of the original issue was given to the registered representatives?

A I don't recall what specifically was given the registered representatives.

Q Were they told whether or not the maximum had been sold?

A I don't recall.

Q Did you tell them whether or not the maximum had been sold?

A I don't recall.

Q Mr. Rega, were the registered representatives informed as to what the firm trading position was in connection with Dennison Personnel?

A No.

Q As a matter of course, would the registered representative be informed what the firm inventory position was?

A No, sir.

Q Was the registered representative informed whether or not this was a principal or an agency transaction?

A Yes, he would be.

the Magistrate and do what you wish, but let's go ahead with this matter.

MR. HECHMANN: Your Honor, I have no further questions to put to Mr. Rega at this time -- I apologize, your Honor, there is one question.

Q Mr. Rega, did there come a time in July of 1972 when you and Mr. Gamerikian visited the offices of Dennison Personnel?

A Yes. As to a specific time, it was either late July or early August, my best recollection.

Q Do you recall why you and Mr. Gamerikian went to the offices of Dennison Personnel?

A We went there to discuss with the principals of the company how they were doing, what plans they had, whether they were going to follow theuse of proceeds as outlined in the prospectus, things of that nature.

Q Do you recall who arranged the meeting?

A No, I don't.

Q Do you recall if during that meeting there was any discussion of the sale of the original issue?

A I don't recall.

Q Do you recall that if during that discussion either you or Mr. Gamerikian indicated to Mr. Bowes that you were looking for another underwriter to do the Dennison

251a

issue?

A No, I don't recall that at all.

Q Was there any discussion that you recall during that meeting as to why the maximum had not been sold?

A I don't specifically recall that, no.

MR. HEGHMANN: Your Honor, I have no further questions.

THE COURT: We will take a recess.

Before that, I just want to say on this business of any outstanding discovery, I urge you to get on with it and to do it in a timely fashion so that this proceeding is not delayed, having in mind that the application here is an application for final injunctive relief.

(Recess.)

purposes, Mr. Beirne. You may come on and demonstrate other points that may represent gaps in it.

Q Mr. Rega, as a result of your knowledge and experience in the securities industry and as a result of your knowledge of the general requirement in the industry that a broker seek the best price and execution for a customer, where is the first place a broker generally goes in an over-the-counter trade to find the bst price and execution?

A He will contact those market makers who are making a market in that issue.

Q And this is where a broker will find the best possible price and execution?

A That is the only place.

Q And the market maker is always selling on a principal basis?

A That is correct.

BY THE COURT:

Q Could you have contacted Stevens, Jackson? What would happen?

A Yes, I suppose we could have.

Q It is your understanding, I gather, that they were committed to possibly as much as 3 million shares. Might not that then have been a logical place to turn in

order to acquire the shares and might you not have anticipated, indeed, that you could have acquired them at 10 cents a share? Or am I incorrect?

A As of May 29, your Honor, my belief is that all selling efforts had ceased, so the only shares they would have available for sale might have been those particular sales that they sold on the initial offering, the same as ours.

Q When you say all selling efforts had ceased, you had ceased your selling efforts, you didn't know what Seggos had done?

A We also believe they had ceased their selling efforts.

Q Would it not have been the thing to make a call to find out, since you needed some shares?

A I suppose we could have, your Honor, yes.

Q Did someone have to join with you in closing the offering? Dennison had not got into the act? They had not said, "We agree to close the offering? Wasn't it unilateral on your part?

A That all parties had agreed?

Q Wasn't it unilateral on your part that Carlton-Cambridge was going to stop and did stop as of May 29 offering the shares?

254a

A Yes, sir.

Q Dennison had nothing to do with that?

A No, it had nothing to do with making that decision at that time.

MR. DAVIS: Could I ask one or two questions of the witness which may clarify this question in your mind?

THE COURT: Yes.

BY MR. DAVIS:

Q Mr. Rega, let's assume on June 2nd that Mr. Cohen had called you for a hundred thousand-share order, and let's assume, as well, that he knew at that time, without saying, of course that you did, but let's assume you knew at that time that Stevens, Jackson had an unsold allotment of the original issue available for sale, possibly 200,000 shares, possibly 300,000 shares, and let's assume that again you wished to get the best price and execution for a customer, do you believe, sir, that it would be within the regulations as you understand them as a registered principal for you to call Stevens, Jackson, Seggos to get original issue stock after you had stopped your selling effort and began trading in the market?

MR. BEIRNE: Once again, your Honor, if this is for informational value, I have no objection. Otherwise,

3:10 P.M.

THE COURT: We will go until 3:13.

All right, Mr. Denker.

All counsel are here except Mr. Dougan.

J O S E P H A B E L, JR., resumed.

CROSS EXAMINATION

BY MR. DENKER:

Q Mr. Dega, there has been previous testimony about the National Quotation pink sheets, do you recall the testimony?

A Yes.

Q Did Carlton-Cambridge receive these pink sheets on a daily basis?

A Yes.

Q Was that received pursuant to a subscription?

A Yes, it is.

Q Isn't it a fact that only broker-dealers are permitted to subscribe to these pink sheets?

A That is correct.

Q And that the members of the general public are not permitted to subscribe to the pink sheets?

A That is correct.

MR. DENKER: I have no further questions, your

Mason.

256a

THE COURT: Mr. Doyle.

CROSS EXAMINATION

BY MR. BOYLE:

Q Mr. Rega, you testified previously, I believe, that 250 which was an agreement relating to the possible acquisition of Stevens Madison & Sayre by Coulter-Cambridge was entered into on either June 14th or June 13, 1972, is that correct?

A That is correct.

Q In any event, this agreement was entered into after the gathering occurred at Republic National Bank on the afternoon of June 12, 1972?

A Correct.

Q Was there any discussion of that agreement during the time that you were in the offices of Republic National Bank on June 12, 1972?

A No, there was not.

Q Did you have occasion subsequently to June 12, 1972, to meet with any of the officers of Republic National Bank insofar as the Dennison offering was concerned?

A No, sir.

Q Did you have occasion subsequent to June 12, 1972, and prior to June 21, 1972, to advise any officer

you attended the gathering at Dorchester and you brought with you a check, some $31,000, which, as you described it, was a net check, in other words, commissions and expenses had been deducted from this check, do you recall that testimony?

A Yes, I do.

Q So prepare a net check was it necessary for you in advance to know exactly how many shares had been sold by Carlson-Cambridge?

A Yes, it would.

Q At the time that you prepared this net check had Carlson-Cambridge, in fact, received the gross amount for the particular shares that were being paid for by that check?

A Yes, I believe we did.

Q And where were the commissions and expenses which had been deducted, where would those funds be found as of June 12, 1972?

A On deposit in one of our banks.

Q Is it likely that those funds would have been on deposit with the Commercial Trust Company?

A It's very possible.

Q Is it probable those funds were on deposit with the Commercial Trust Company?

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prior there are entries for the period June 12, 1972, through June 21, 1972, and I ask you to read the closing balance for each of those days as they appear on this record.

A Could you give me the dates again?

Q June 12, 1972, until June 21, 1972.

A June 12th, the balance was approximately--

Q To simplify things, I would appreciate it if you just mentioned that, the closing balances.

Having mentioned those closing balances, can you tell the court whether or not on each date the account closed with a balance in excess of $41,000?

A Yes, it did.

Q Could you tell the court the minimum balance, minimum closing balance in that account during that period of time, June 12, 1972, through June 21, 1972?

A $75,000.

Q In other words, had the commissions and expenses been forwarded to Republic National Bank on June 12, 1972, and been returned to your firm on June 21, 1972, you still would have had a minimum working capital as reflected by the closing balance in this account of approximately $35,000 during each of the days in question, is that correct?

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fact that the issue had become stale can you think of any other reason why indications would have slowed to a trickle?

A No, sir.

Q Could it have been possible that all of the salesmen had fulfilled their guidelines?

MR. JAFFE: I object, your Honor, that is a leading question.

MR. DAVIS: Objection to the conjecture, your Honor.

THE COURT: On the leading, overruled.

On the conjecture, the form is bad. Modify your form somewhat without restating the whole question.

Q Do you know if the salesmen had stopped selling new issues because of the guidelines?

THE COURT: Because of what?

MR. HEGHMANN: The guideline that had been set down at the outset of the issue.

THE WITNESS: I don't think I understand the question.

THE COURT: Is your question: was one of the reasons for the slow down or diminished interest in the Dennison shares that the salesman had met their allocations as per the guidelines which you have told us you laid down,

is that the question?

MR. HEGEMANN: Yes, your Honor. 260a

THE WITNESS: I don't believe that would be one of the reasons, no. The fact is that I know of no registered representative that came to us indicating that he could sell more shares and was denied that fact or denied that right to sell more shares.

THE COURT: Had they met their allocations?

THE WITNESS: We would have to judge on an individual basis.

I am sure some did but there are many who did not.

THE COURT: Were there several who did not and were there allocations then given to someone else who disposed of that amount?

THE WITNESS: If that individual had requested from us that he had more indications, yes.

THE COURT: If an individual indicated he had more indications than he had allocated to him to sell he was required to come to get approval to go beyond this allocation, correct?

THE WITNESS: He was to come and request it, yes, and there would have been no problem in letting him have the allocation.

THE COURT: Is it correct to assume that did happen,

confirmations received on the 22nd of May and [illegible]

there were those who came in and did ask to go beyond their allocations?

261a

THE WITNESS: Yes, there were.

THE COURT: There were those who never did meet their allocations, correct?

THE WITNESS: Correct.

THE COURT: Were all of those amounts which represented registered representatives not meeting their allocation, was all that balance used up by somebody else with your permission or otherwise?

THE WITNESS: It may have been, I couldn't tell you for certain.

THE COURT: Your allocations when totaled up totaled what amount of shares?

THE WITNESS: In excess of three and a half million. The allocations or indications?

THE COURT: Allocations.

THE WITNESS: I would say the general guidelines for the allocations were in the area of three million.

I and my firm is representing four of the registered representative witnesses and some of the witnesses, from my understanding from the plaintiff, that are now being called really have no bearing or, at most, a highly indirect bearing on the cause of the representatives and if this is so then I would respectfully ask the Court that I be excused from this portion of the trial so that I can then come back again similar to Mr. Brown.

THE COURT: If you wish to leave, you may.

MR. BERGER: Thank you, sir.

- -

G E O R G E S. D A L L A L , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. HEGHMANN:

Q Are you employed?

A Yes.

Q For whom do you work?

A Republic National Bank of New York.

Q Where is that located?

A 452 Fifth Avenue, New York City.

Q What is your position with the Republic National Bank?

A I am an assistant cashier at the bank.

Q For how long have you been employed by the Republic National Bank?

A Since 1967.

Q For how long have you been an assistant cashier?

A Since 1969.

Q Is it fair to state then, sir, that in April of 1972 you were an assistant cashier with Republic National Bank?

A Yes.

Q At the same address?

A Yes.

Q At the same address?

A Yes.

Q Looking back to April of 1972 can you briefly describe to me what your duties were?

A My duties were --

THE COURT: Can you lead him on?

Q Did your duties include the supervision of escrow accounts?

A Not specifically.

Q In connection with your duties did you have any connection with an escrow account for Dennison Personnel?

A Yes.

MR. HEGHMANN: Your Honor, if it please the Court, many of the facts to be elicited from this witness are included in the pretrial order. If I may lead the witness through many of the statements, I believe it will save time.

THE COURT: Starting on what page?

MR. HEGHMANN: Starting on page 6, your Honor, undisputed fact No. 24.

THE COURT: Four?

MR. HEGHMANN: 24, your Honor.

THE COURT: All right.

Q Mr. Dallal, is it true that defendant Republic had no dealings with any other defendants in this action prior to April of 1972?

A It is true.

Q Mr. Dallal, at that time did defendant Coven, who was acting as counsel for Dennison, approach defendant Republic and ask whether they were interested in acting as escrow agent in connection with the offering of the common stock of Dennison?

MR. DERFNER: I have an objection at this point, not to the fact that they were approached, but the fact that it is being elicited through this witness because that would imply that this witness is the contact of

Mr. Coven and it is my understanding it is not and this witness has no personal knowledge of that. 265a

THE COURT: I don't know about that part of it but in or about April of 1972, Mr. Dallal, did Mr. Coven then acting as counsel for Dennison Personnel approach Republic National Bank and undertake to determine whether or not the bank would be interested in acting as an escrow agent in connection with the offering of common stock of Dennison, did that or did that not happen?

THE WITNESS: It did happen.

MR. DERFNER: I want to clear up that he was not the contact point, that is all.

THE COURT: You can bring that out on cross.

MR. DERFNER: Ordinarily if this was not a stipulated fact it would be an objectionable question to the qitness. I don't object to this fact going into evidence.

THE COURT: You are saying the objection would be based on what?

MR. DERFNER: He has no pe4sonal knowledge of this, it would be hearsay.

THE COURT: I understood he does have personal knowledge.

Q Do you have personal knowledge that Mr. Coven

approached the bank and opened the escrow account? 266a

A Yes, from the point of view that Mr. Hirsch, who is a senior vice-president and director of the bank, was called but since he was out sick the call was turned over to me.

THE COURT: So you have personal knowledge?

THE WITNESS: Yes.

MR. DERFNER: I apologize. That was not my understanding.

THE COURT: Fine.

Go ahead.

Q Mr. Dallal, was an account opened at the Republic National Bank for the Dennison Personnel issue?

A Yes, an account was opened.

Q Was a new account card signed?

A Yes.

(Plaintiff's Exhibit 13 was marked for identification.)

Q Mr. Dallal, I will now hand you what has been marked Plaintiff's Exhibit 13 and ask you to examine it.

THE COURT: What is it, sir?

THE WITNESS: It is our new account rsport.

Q What effect, if any, did that document have, Mr. Dallal?

A I have recollection of, I believe, a couple of

267a

A It assigns an account number to the new account. It indicates the account name, the person who introduced the account who gets credit for the account at the bank, the initial deposit that is received, and any remarks or advices that are supposed to be followed by the bank employees and officers.

Q Mr. Dallal, is it fair to say that this document signaled the opening of the account to receive the funds for the Dennison Personnel offering?

A Yes.

MR. HEGHMANN: At this time I offer Plaintiff's Exhibit 13 into evidence.

MR. JAFFE: No objection.

MR. DAVIS: No objection.

MR. DERFNER: No objection.

MR. BOYLE: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 13 was received in evidence.)

Q Mr. Dallal, what type of account was this?

A This was a checking account.

Q Did it have any other designation?

A It was designated as Carlton-Cambridge & Company, Inc. and Stevens-Jackson, Seggos, Inc. as trustees for

subscribers to the shares of Dennison Personnel, Inc. 268a
escrow.

MR. JAFFE: I have an objection. I want to clarify this. There are a number of initials on this document. Which are this witness' and which are other persons? It would aid in my cross-examination regarding it.

THE COURT: Initials on the document?

MR. JAFFE: Yes. I want to understand which are of this witness and which are of other persons.

THE COURT: I am not sure I understand. I gather that, in effect, you are raising a question on the voir dire, is that so?

MR. JAFFE: Yes, your Honor. I should have arisen earlier.

THE COURT: All right. We will interrupt long enough for you to make the inquiry.

WORK DIRE EXAMINATION

269a

BY MR. JAFFE:

Q Did you make these markings on the new account card, Mr. Dallal?

A No, I didn't prepare it.

Q Well, looking at the initial above "individual accepting account" --

A That is somebody on the bank platform, which is the main banking floor, probably a girl who takes down the information, issues the checkbooks, assigns a number, does basically the clerical work involved.

Q Then there are two initials underneath the statement, "All withdrawals must be approved by the legal department."

Do you know whose initials those are?

A This is Mr. Morris Hirsch, who is the senior vice president.

Q Then there is another initial after that.

A I do not recognize this one. It may have been George Lindgrin, but I do notrecognize it.

Q This did come into your possession?

A No, it was part of the bank's records.

MR. JAFFE: No further questions. No objection. I just wanted to know who was responsible.

270a

BY MR. HEGEMAN:

Q Mr. Dallal, that report indicates what the nature of the account is?

A Will you be more specific? How do you mean that?

Q Well, was it an escrow account?

A It is so indicated, escrow.

Q Do you know if it was an escrow account?

A It specifically says escrow, and in the remarks it says "List of subscribers, escrow agreement and related documentation filed in legal documents vault; all withdrawals must be approved by the legal department."

Q Independent of that document, do you know if an escrow agreement was signed?

A Yes.

Q Showing you Plaintiff's Exhibit 14 in evidence, is this the escrow agreement that was signed for the account?

A Yes.

Q Mr. Dallal, do you recall who signed the escrow agreement for the bank?

A It was signed by Ernest Ginsburg.

Q Who is Mr. Ginsburg?

A He is vice president and counsel for the bank.

see the statement of the account to be absolutely sure. This is not issued until the cash goes into the account.

Q At this time I will hand to the witness what has been marked Plaintiff's Exhibit 16 in evidence which is the monthly statement for the escrow account.

THE COURT: Is that 16 in evidence?

MR. HEGHMANN: Yes, your Honor.

THE COURT: All right.

Q Does that refresh your recollection?

A Yes.

Q As to when you first deposited it?

A Yes, the 19th.

MR. HEGHMANN: I ask the clerk to mark as Plaintiff's Exhibit 59 for identification a letter addressed to Republic National Bank from Carlton-Cambridge.

It's a one-page letter to which is attached a series of confirmations bearing the name of Carlton-Cambridge & Company, Inc.

(Plaintiff's Exhibit 59 was marked for identification.)

Q Mr. Dallal, I will pass to you what has been marked Plaintiff's Exhibit 59 for identification and ask you to examine it. 272a

THE COURT: Do you recognize it, sir?

A This was not given to myself. I have seen it in our files.

Q Do you know what it is?

A Yes.

Q What is it, sir?

A This is a letter addressed to Mr. George Lindgrin, who was the manager of our main floor operation where normal day-to-day banking is conducted, which indicates that this is a check for $27,320, representing the purchase of 273,200 shares of Dennison Personnel, Inc., and photostatic copies of the confirmations.

Q Mr. Dallal, do you know who made the copies of the confirmations?

A No.

Q Did you receive original confirmations?

A I did not. Whatever was available would have been with the bank file, which has been submitted. I did not personally receive any confirmations.

MR. BOYLE: I believe what Mr. Heghmann is trying to put in evidence at this point is a series of confirmations

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that were received on the 18th of May, a second series of confirmations received on the 22nd of May, and, finally, a third batch of confirmations which were just in the files of the Republic National Bank. All of these confirmations have been included in the pre-trial order under designation B-13, documents to be introduced by the defendant Republic National Bank. They have been incorporated as affidavits and submitted to all counsel in connection with prior matters. I think everybody is aware of them, and while Mr. Dallal is not the person who received them or made the copies, nevertheless, everybody has agreed by indication of the fact that no one has objected to these documents, that these are documents which are in the file of Republic National Bank, and I would not object to having them put in now without further questioning of Mr. Dallal.

Another point of clarification concerning these confirmations: there are three groups. The first group of confirmations relates to a paragraph in the pre-trial order -- I am looking for the precise paragraph now, your Honor -- 52, your Honor, and 53 of the pre-trial order.

Paragraph 52 deals with the documents now being presented by Mr. Hegmann, to wit, the confirmations received by the bank on May 19th, along with the initial deposit of $27,320.

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The second document that Mr. Heghmann, I believe, will present to the court, are the confirmations relating to paragraph 53, which has to do with the deposit made in the account on May 22, 1973, in the amount of $21,650. 274a

The balance of the confirmations that he will introduce, your Honor, basically refer to paragraph 41 of the pre-trial order.

Now, unfortunately, we do not seem to have all the confirmations in the account at this time, at least, we were unable to find them, your Honor, but it is stipulated in paragraph 41 as to every confirmation that we did have in our possession as of a particular trade date or particular closing date, and each of those confirmations has a page stamp on it indicating that the shares represented by those various confirmation tickets had been paid for on any of a number of various dates, but in any event, always prior to May 30, 1972, and these documents respectfully are submitted in accordance with paragraph 52,53 and 41 of the pre-trial order.

MR. DERFNER: No objection.

MR. DAVIS: No objection.

THE COURT: Received.

MR. HEGHMANN: This was deemed marked Court's

Exhibit 1 in evidence. This is a clean copy.

THE COURT: Mark it.

(Court's Exhibit 1 received in evidence.)

THE COURT: Counsel has submitted the entire pre-trial order. I am going to separate the portion which has been made a court's exhibit and cross out those portions of the first page which are not applicable, and those portions of the last page which are not applicable. That means we now have the bottom portion of page 2 and the pages following to page 17, and we are receiving the upper portion of page 17 through paragraph 85. That is Court's Exhibit 1 in evidence.

BY MR. HEGEMANN:

Q Mr. Dallal, the prospectus indicates that all funds were to be deposited into the escrow account.

MR. DERFNER: Objection, your Honor. He is testifying for the witness at this point. The prospectus is Exhibit P-1 and it speaks for itself.

THE COURT: Why don't we let him state his question and see where we go.

Q Mr. Dallal, the funds received on May 18th and reflected in Government's Exhibit 59 for identification, were they gross funds? In other words, were they the total funds for the number of shares sold?

looking at it. I see that it was not received

276a

MR. DERFNER: Objection, your Honor. There is no basis that has been laid here for the witness testifying to this. We must establish first whether he has such knowledge.

MR. BOYLE: Paragraph 52 of the pre-trial order disposes of this and shows that those were gross proceeds for the sale of those shares.

THE COURT: That would appear to be the implication of 52.

MR. HEGEMANN: I will withdraw the question, your Honor.

Q Mr. Dallal, did there come a time when the bank received less than the gross proceeds from the sale of Dennison Personnel?

MR. DERFNER: Objection, your Honor. This calls for a conclusion. We don't know that this witness is competent to testify to this.

THE COURT: It does seem so.

Q Mr. Dallal, did there come a time when you were informed that all of the proceeds derived from the sale of Dennison Personnel would not be deposited in the escrow account?

MR. DERFNER: Objection to what the witness was informed without describing who it was that may have informed

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MR. DERFNER: Objection as to reading or

him of this.

277a

THE COURT: Sustained.

Q Mr. Dallal, did anyone ever inform you that less than all of the funds would be deposited in the escrow account?

A Yes.

Q Do you recall who that was?

A It was Mr. Coven or Mr. Coven's office.

Q Do you recall when you were informed approximately that all of the funds would not be deposited in the escrow account?

A Very shortly after May 30th.

Q Could you be a little more precise?

A No.

Q Was there a conversation at that time?

A We received a telephone call that three million shares had been sold, and that since they were sold the underwriters would be forwarding the proceeds to us. We requested and were told by Mr. Coven's office that an opinion to the effect that the offer of three million shares had been sold would be delivered to the bank, which was then delivered.

MR. DERFNER: Unless there is a showing that the witness actually received that telephone call, I move to

strike his testimony as being incompetent testimony and hearsay. From the witness' answer the implication is that the witness did not receive the telephone call.

THE COURT: Is this a disputed fact area?

MR. DERFNER: This is not in the stipulated facts.

THE COURT: Aside from that?

MR. DERFNER: Quite frankly, this is the first time I have heard of this telephone call.

THE COURT: Whether it was a call or otherwise brought to his attention, is this a disputed area?

MR. BOYLE: If we let the witness clarify his answer, probably there will be no objection.

THE COURT: Let's hear what he has to say.

Q Mr. Dallal, did you receive this phone call?

A Yes.

Q Now, when you received this phone call, did the other party identify himself?

A Of course, the person identified himself, but I do not remember whether it was Mr. Coven himself or one of his associates who called, because I had been in contact with both him and his associate, another attorney in his office.

Q But you yourself did receive this phone call?

A Yes.

Q To the best of your recollection can you describe

279a

what was said during this phone call? What the other party said and what your response was?

A To the best of my recollection, the person calling indicated that the offer of three million shares had been sold and that an opinion of counsel would be forthcoming.

MR. DERFNER: The offer of two million shares or three million.

THE WITNESS: The three million, which was in excess of the minimum required.

Q Do you recall if you had any response to this?

A My response is, "We would like to see a copy of the opinion for our counsel's review."

Q Do you recall any other discussion during this conversation?

A I believe I was asked what the balance in the account was at that point.

Q Do you recall if you made any response?

A Yes, I immediately checked with our bookkeeping department and put the person on hold, and gave them the balance in the account, indicating what the total in the account was and what was collected funds.

Q Do you recall what that balance was?

A No, I don't remember. May I refresh myself from the statement?

280a

what date?

MR. HEGHMANN: I believe he was handed Plaintiff's Exhibit 16 in evidence to refresh his recollection as to what the amount was at the time of the phone call.

THE COURT: All right.

A Mr. Heghmann, I don't know the date of the phone call so I don't recollect the date of the phone call exactly. It could have been any day after May 30. For example, on June 1st there was $73,000. On June 7 it was 172,000. I don't remember exactly.

Q Mr. Dallal, as to the figure which you indicated over the phone, do you recall if it was less than $100,000?

A I do not recollect what the figure was.

Q Mr. Dallal, at or about the time of this telephone conversation do you recall if there were any closings scheduled or meetings scheduled in connection with the Dennison Personnel issue?

A There were no scheduled meetings that I know of because we could not schedule them until all funds were accounted for.

Q Do you recall the meeting held on June 12?

A Yes.

Q Prior to June 12 do you recall or did there come a time when various participants in this Dennison trans-

action came to the bank? -281-

A I have recollection of, I believe, a couple of the participants coming in in between the May 30th and June 12 dates, indicating that they heard there was going to be a closing and I indicated to them there could not be a closing because we didn't have the adequate funds.

Q Do you recall who came to the bank?

A Again, this is stretching my memory. I believe it may have been either Mr. Bowes or a representative for Mr. Bowes of Dennison Personnel and I believe a Mr. Ziffer may have been there.

Q Do you recall if they came on more than one occasion?

A I don't recall exactly.

Q Do you recall approximately how long before the June 12 meeting they came?

A As I said, it must have been somewhere, let's say, after the first week -- let's say the week before, some time the week before June 12 or during the week prior to June 12. I cannot specify the date. It could have been 6, 7, 8.

Q Mr. Dallal, as has been indicated, and as i evidenced by Plaintiff's Exhibit 59, when funds were received on at least two occasions and additional confirm-

Q Mr. Dallal, at the time of your conversation, your telephone conversation with either Mr. Coven or a representative at his office, when you indicated the amount of money in the escrow account do you recall if that amount was less than $300,000?

A Yes, it was less.

Q Do you recall if it was less than half?

A I don't recall.

Q Do you recall if you asked the person on the other end of the line where the remainder of the money was?

A I don't recall the conversation specifically. I would assume --

MR. DERFNER: Objection, your Honor.

THE COURT: Yes, strike that.

Q Mr. Dallal, I believe you indicated that during that conversation you asked for an opinion of counsel? Is that correct?

283a

A It was either offered to us or we asked for it. But it was an understanding that we would have gotten it, anyway.

MR. DERFNER: I object to it and move that the answer be restricken. The witness is not certain.

THE COURT: Strike only the portion referring to the understanding.

Q Did you subsequently receive an opinion of counsel?

A Yes.

MR. HEGMANN: At this time I will ask the clerk to mark as Plaintiff's Exhibit 8 for identification a four-page letter addressed to Carlton-Cambridge & Company, Inc. and Stevens Jackson Seggos, Inc. on the letterhead of Bernard Jay Coven, P.C.

(Plaintiff's Exhibit 8 marked for identification.)

Q Mr. Dallal, I ask you to look at what has been marked Plaintiff's Exhibit 8 for identification and ask you to examine it.

Mr. Dallal, do you recognize this document?

A Yes.

Q Can you tell the court what it is?

284a

A It is an opinion letter from the law office of Bernard Jay Coven, P.C., dated May 30th, addressed to Carlton-Cambridge and Stevens Jackson & Seggos.

MR. DERFNER: Could the witness be directed to speak up?

THE COURT: Yes.

A (Continuing) And indicating that all requirements have been met in terms of the underwriting.

MR. DERFNER: Your Honor, I object to the witness' testimony characterizing the letter. It speaks for itself.

THE COURT: Objection sustained.

Q Mr. Dallal, is this the letter you received pursuant to conversation with either Mr. Coven or a representative of his office?

A Yes.

MR. HEGHMANN: I move that Plaintiff's Exhibit 8 be received in evidence.

THE COURT: Any objection?

VOIR DIRE EXAMINATION

BY MR. DERFNER:

Q Do you recall the date this letter was received?

A No, sir.

Q Did you receive an original copy of this letter?

When I say "you," did the bank receive it through the mails?

A I believe it was by messenger. I believe it was the original or a copy of that. I gave it to our b2 counsel. I could not specifically answer.

Q What I am referring to, was the letter that you received a signed copy or was it a conformed copy or was it a photostat of a signed copy, if you recall? Without looking at your [illegible], please.

A I don't recall exactly what it was.

Q Do you recall when in relation to the phone call from [illegible] or his representative this letter was received?

A No, not the date. I do not recall the date. It was subsequent to that call.

Q Approximately how long after?

A I don't know. It was before the 12th, on or before the 12th of June.

Q But, in any event, it was subsequent to May 30, 1972?

A Yes.

Q Did you receive this prior to the meeting at the bank on June 12, 1972?

A I do not recall exactly, but I believe it was prior to.

286a

Q But you are not certain?

A I am not certain.

Q Could you have received it the same day?

A I may have, but I do not recall the date.

MR. DERFNER: I have no further questions, your Honor, and no objection.

THE COURT: Received.

xx (Plaintiff's Exhibit 8 received in evidence.)

Q Mr. Dallal, did there come a time when a meeting was held at the Republic National Bank for the purpose of closing the Dennison Personnel issue?

A Well, there was a meeting which we have discussed on the 12th, but which we on our part could not close.

Q Concerning the meeting that did occur on the 12th, to the best of your recollection can you recall and describe to the court what occurred at this meeting?

A If I may just give his Honor the picture of the room, because this is important, I think, in discussing the actual gathering or meeting that occurred, the room that I worked on is on the second floor of the bank, and it is approximately a hundred by about 35 or 40 feet wide, and there are a number of desks on two lines. I occupy a desk approximately in the middle of the room. There are two or three desks that are empty. When the various people

who came to that meeting arrived, I indicated to Mr. Coven that because the check that was being presented to us in the amount of thirty one thousand some-odd dollars was not good funds per se, we could not close, and I had other activity of the bank going on, because this is not my specific function, to be an escrow officer of the bank. This was one of our two escrows that we have ever done. I had other things happening; I had other work to do. And when I indicated that we could not close, I assumed this was the end of my participation in any of the conversation with the principals involved, because I knew that we could not close and that was it.

Q Mr. Dallal, if we could break it down into a little more detail, I believe you indicated a check for $31,000?

A Yes, sir.

Q Whose check was this?

A It was a check from Carlton-Cambridge drawn on their bank in New Jersey.

Q Now, prior to the deposit of this check, how much money was in the escrow account?

A I could tell you from --

Q Looking again at Plaintiff's Exhibit 16 in evidence?

A Yes, there was $231,000 in the account on that date.

... the escrow funds change hands?

A No.

Q In other words, was there any disbursement out of the escrow account?

A No, sir.

Q At the time of this meeting had the certificates been received?

A No, sir.

Q At or about the time of this meeting, did you receive any correspondence from either the [illegible] the counsel for Dennison?

A Can you specify?

MR. HEGHMANN: At this time I will ask the clerk to mark as Plaintiff's Exhibit 19 for identification a letter, one-page letter on the letterhead of Stevens, Jackson & Seggos, addressed to the Republic National Bank. It appears to be signed in the name of Jules Ziffer and is dated June 13, 1972.

(Plaintiff's Exhibit 19 was marked for identification.)

Q I will hand what has been marked Plaintiff's Exhibit 19 for identification to the witness and ask you to examine it.

Mr. Dallal, do you recognize that document?

A Yes. It was addressed to myself.

Q Can you tell the Court what it is?

A It is a letter signed by Jules Ziffer on Stevens, Jackson & Seggos' stationery, dated June 13, indicating that they had sold 351,000 shares and what commissions they had netted and what was due to them.

Q Mr. Dallal, do you know why this letter was sent to the bank or sent to you?

A Yes.

MR. DERFNER: Objection, your Honor.

THE COURT: I will allow it.

A The reason was, we wanted letters from both underwriters confirming what they had netted from the sale of the stock.

THE COURT: You mean you asked for it?

THE WITNESS: We asked for it.

Q Did you also receive a letter from Cambridge?

A Yes.

Q I will now show you what has been marked Plaintiff's Exhibit 18 in evidence.

Mr. Dallal, is that the letter you received from Carlton-Cambridge?

A Yes.

Q Referring to Plaintiff's Exhibit 18 in evidence,

do you know how you received that letter?

A Looking at it, I see that it was not received in the mail.

Q How do you know that, Mr. Dallal?

A Because all items sent through the mails to the bank, they are stamped, indicating the date received.

Q Do you recall how you received this letter?

A I do not recall the specific sentences of receiving it.

THE COURT: You did receive it?

THE WITNESS: Yes, we had it in our file.

MR. HEGHMANN: I will now ask the clerk to mark as Plaintiff's Exhibit 20 for identification, a one-page letter on the letterhead of Bernard J. Coven, PC, addressed to the Republic National Bank, which appears to be signed with the signature of Bernard J. Coven.

(Plaintiff's Exhibit 20 was marked for identification.)

xx Q I will now hand to the witness what has been marked Plaintiff's Exhibit 20 for identification, and ask you to examine it.

Can you identify what has been marked as Plaintiff's Exhibit 20?

A It is a letter from Mr. Bernard J. Coven, which

advises us that over --

MR. DERFNER: Objection as to reading or characterizing, your Honor. It has not been offered in evidence.

Q Did you request this letter from Mr. Coven?

A Yes.

Q Did you receive this letter, you personally?

A We received it through the mails on the 14th.

Q Did it come to you personally?

A Yes.

MR. HEGHMANN: Your Honor, I would like to offer it.

THE COURT: Any objection?

MR. DERFNER: Your Honor, I do not object to either of these letters, Exhibits 19 or 20 being entered in evidence. However, the witness had testified that these letters were received on the 12th. That was his original testimony and then he testified that these letters were received in the mail and an examination of 19 shows that it was stamped received by the bank on the 15th, and he has testified Coven's letter was received on the 14th.

Just to clarify the record, these were not received on the 12th, but subsequently would be the nature of my objection. Other than that, I have none.

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THE COURT: On the question of the offer, anything else? If not, you are offering 19 and 20?

MR. HEGHMANN: Yes, your Honor.

THE COURT: Both?

MR. HEGHMANN: Yes, your Honor.

THE COURT: Received.

(Plaintiff's Exhibits 19 and 20 were received in evidence.)

MR. HEGHMANN: At this time, your Honor, I would also like to offer Plaintiff's Exhibit 21, which is the payment advice sent out by the Republic National Bank, into evidence.

THE COURT: Any objection?

MR. DERFNER: No objection.

MR. COVEN: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 21 was received in evidence.)

Q Mr. Dallal, again examining Plaintiff's Exhibit 19 and 20, which are now in evidence, and in relation to this meeting on June 12th, do you recall when these letters were received?

A I erred in term of the June 13th letter, from Mr. Coven, because our mail stamp is June 14th, and the

Q When did you request that these letters be sent to you?

A I believe the request was made on the 12th.

THE COURT: That pertains to a request made to who? Were each of the letters requested on the 12th?

THE WITNESS: Yes.

THE COURT: If so, to whom did you direct the request?

THE WITNESS: We requested Mr. Coven to give us a letter on behalf of Dennison, as counsel for Dennison, and to the two underwriters, to specify that they had netted out their commission.

MR. DERFNER: Your Honor, can we also specify who made the requests?

THE COURT: You asked for a letter from Stevens, Jackson, and Exhibit 19 is the letter.

You asked for a letter from Dennision, and 20, you say, is the letter. Do we have the letter from Carlton as well?

MR. HECHMANN: Yes, your Honor, 18.

MR. BOYLE: That letter, your Honor, was intro-

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duced when Mr. Rega was here.

THE COURT: Someone wanted to know who made the requests for these letters.

THE WITNESS: I believe it was done jointly by myself and Mr. Lytle, our counsel.

Q Mr. Dallal, I believe you indicated payment was received by the New Jersey Bank on the 20th of June; is that right?

A Yes.

Q When this payment was received, including this payment, how much money was in the escrow account?

MR. HEGHMANN: The witness is referring to Plaintiff's Exhibit 16 in evidence.

Q (Continuing) Does that indicate the total amount, Mr. Dallal?

A Yes. The total amount was $263,496.75.

Q Mr. Dallal, were these funds subsequently disbursed?

A Yes.

Q Do you recall approximately when they were disbursed?

A About $262,000 were disbursed on the 21st, and the balance was $1000, disbursed on the 27th.

Q Mr. Dallal, do you recall why the $1000 was not

disbursed until the 27th? 295a

A Because that represented a check that we received on the 21st, which was not collected until the 27th.

MR. JAFFE: We had marked as Exhibit 17, and I think that is the best evidence when the bank received it. Maybe if I can hand it up --

THE WITNESS: I'm sorry, I was looking at the wrong column, at the disbursement column. It was received on the 15th.

THE COURT: On the 15th?

THE WITNESS: It was received on the 15th and not collectable until the 27th.

Q Mr. Dallal, was there ever $300,000 in the escrow account?

A No, sir.

Q What is the greatest or largest amount of money that was in that account?

A $263,496.75.

Q Mr. Dallal, do you recall the date when the initial disbursement was made?

A The 21st.

Q Did you prepare a memorandum describing the events surrounding the disbursement?

A I prepared the memorandum of disbursement author-

underwriters plus the counting of the certificates was adequate.

Q Mr. Dallal, in connection with the counting of the certificates, do you know what the term "street name" means?

A Yes.

Q What is your understanding of that term?

A Where certificates are held by a brokerage house in their name for their customers, where they are in possession of the certificates.

Q Mr. Dallal, do you recall approximately how many of the certificates delivered by the American Stock Transfer Company and counted by your bank in connection with Dennison Personnel were in street name?

A I do not recall.

Q Mr. Dallal, to your knowledge has the Republic National Bank opened any other escrow accounts in connection with public offerings?

A No, sir, not since this.

Q Not since Dennison Personnel?

A That is correct.

Q In connection with your responsibilities at the Republic National Bank would you be in position to know whether such an account was opened?

A Yes, I would know.

Q To the best of your knowledge has the Republic National Bank ever authorized anyone to file any documents with the Commission listing the Republic National Bank as escrow agent?

A To the best of my knowledge we have not authorized any such listing.

MR. HEGHMANN: Your Honor, we have no further questions.

Your Honor, I believe yesterday we had marked Plaintiff's Exhibit 59 for identification, a May 18th letter to the Republic National Bank from Carlton-Cambridge, which the witness identified as the first deposit into to escrow account. At this time I would like to offer Plaintiff's Exhibit 59 into evidence.

THE COURT: Any objection?

MR. BOYLE: No objection.

MR. DAVIS: No objection.

(Plaintiff's Exhibit 59 was received in evidence.)

2 xx MR. HEGHMANN: Your Honor, in addition to the marking of that document, there were identified two other sets of confirmations as representing all of the confirmations received by the bank in connection with deposits

not he had any present recollection as to what the escrow agreement provided regarding this event. He gave his present recollection. I then showed him the escrow agreement to refresh his recollection.

THE COURT: His answer to that?

MR. BOYLE: I have not gotten to it.

THE COURT: Let's take that next and see where we wind up.

MR. BOYLE: Thank you.

Q Mr. Dallal, having looked at Plaintiff's Exhibit 14, specifically at Paragraph 2-b, is there any provision or reference in there that you shall receive an opinion of counsel?

A No, it says notice from either the company or the underwriters.

Q In other words, the Republic National Bank as escrow agent would receive notice from the company or underwriters when the minimum number of shares had been sold?

A Yes.

Q You testified previously, I believe, that you had a phone conversation with either Mr. Coven or an associate of Mr. Coven's. I believe you indicated it was either Mr. Coven or an attorney in his office? Is

that correct?

A Yes.

Q Can you identify when that conversation occurred?

A It was subsequent to May 30, but exactly what day I do not recollect.

Q At that time were you told that the 3 million shares had been sold?

A Yes.

Q During the course of your dealing with this escrow account had you spoken on occasion with either Mr. Coven or the lawyer who is assisting in his office?

A Yes.

MR. DERFNER: Could we just have that read back?

(Question and answer read.)

Q Could you identify the name of the lawyer that you spoke to in Mr. Coven's office on those occasions when you did not speak with Mr. Coven?

A I do not remember his name specifically; I believe it was something like Ackerman.

Q Mr. Ackerman?

A It sounded like that.

Q The phone conversation you had in which he advised that the 3 million shares that had been sold was

in a phone conversation with Mr. Coven or an associate of his, whom you believe to be Mr. Ackerman? Is that correct?

A Yes.

Q I believe in your direct testimony you were asked whether or not Mr. Bowes and Mr. Ziffer came to the office of Republic National Bank on or about June 5, 1972.

Do you recall that testimony?

A Yes.

Q Do you recall how long Mr. Bowes and Mr. Ziffer were in your presence in the offices of Republic National Bank on the day of June 5, 1972?

A A very few minutes.

Q Now, there came a second occasion when people came to the offices of the Republic National Bank? Is that correct?

A Yes.

Q Is that on June 12, 1972?

A Yes.

Q I believe you testified on direct examination that at that time you were handed a check, a Carlton-Cambridge check in the amount of thirty-one thousand five hundred three dollars and some-odd cents drawn on their account at the Commercial Trust Company? Is that correct?

commissions, etc., that had been deducted from the escrow account?

A Yes.

Q Do you recall any specific conversation with any particular person on this point?

A Not any very specific conversation.

Q Did there come a time after you had this conversation with Mr. Lytle on June 12, 1972, and prior to June 21, 1972, where you received the documents that you now hold in your hand, P-18, 19 and 20?

A Yes, sir.

Q Directing your attention to P-19 and 20, can you tell me when those documents were received?

A P-19 was received by us on June 15th. P-20 was received by us on June 14th.

MR. BOYLE: Mr. Heghmann, do you have the originals of P-19 and 20?

MR. HEGHMANN: Yes.

A P-19 was received on June 15th. P-20 was received on June 14, 1972.

Q P-19, is that addressed to you?

A Yes.

Q P-20, is that addressed to you?

A Yes.

A Yes.

Q If Carlton-Cambridge deposited a subscriber's check in its own bank it would get quicker notice of any bad check than if it were deposited in the escrow account? Would that be a fair statement?

A Certainly.

Q As a matter of fact, were there any bounced checks in the escrow account?

A Not to my knowledge.

Q Any of the checks that Carlton-Cambridge sent representing checks received from subscribers, then put in one check, do you have any knowledge of any being bounced in any case?

A I have no knowledge of any check bouncing.

Q Is it not a fact that there is a requirement under the escrow agreement that the names and addresses of the subscribers be sent in with any checks?

A I believe there was such a requirement.

Q And, of course, the method by which Carlton-Cambridge sent in one check and a listing of the confirmations was, would you say, a convenient method, as opposed to getting bundles of small checks coming in?

A Yes, sir.

Q Would you say it assisted in having the escrow

THE COURT: It is a conclusion.

A Well, we had to ascertain for ourselves to be absolutely certain that in excess of 3 million shares had been sold, that we counted the certificates.

Q In fact, then, you did not rely on Mr. Coven's letter as being the sole basis for determining?

A It was not the sole basis.

Q You independently verified the number of shares beingissued?

A Yes.

Q. Mr. Dallal, I believe you testified that Mr. Coven or a representative of his office had called you personally prior to June 12, 1972, and stated that 3 million shares of Dennison had been sold?

A I believe that is correct.

Q I believe you also testified on direct examination, sir, that pursuant to that conversation you asked from Mr. Coven or his representative to supply you with a letter or some evidence of that fact? Is that also so?

A I believe it was stated we would get it, or I asked for it.

Q Tell us specifically what you asked for?

A I do not remember what I asked for specifically.

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Q Will you tell us what you received?

A We received a letter dated May 30 which spelled out the facts that the issue had been sold under the provisions of the underwriting agreement, et cetera.

MR. DERFNER: May I have the answer read?

(Answer read.)

Q Mr. Dallal, could you elaborate on what you mean by "et cetera"?

A It was the wrong word. Under the agreement, under the underwriting agreement period.

MR. DERFNER: Do you have Exhibit 8?

Q Mr. Dallal, is the letter you are referring to the same as that marked Plaintiff's Exhibit 8 in evidence?

A Yes, sir.

Q Mr. Dallal, isn't this letter addressed to Carlton-Cambridge & Company and Stevens, Jackson, Seggos, and not to the bank?

A It is such a fact.

Q Mr. Dallal, you do have the original in your hand? Isn't that correct?

A Yes.

Q Do yousee a date stamp of the bank's on that letter?

A No, sir, because I believe it was delivered

by hand.

Q You believe it was delivered by hand? What is the basis of that belief?

A There is no date stamp.

Q Do you recollect whether that letter, in fact, was delivered to the bank by hand?

A I do not recollect the specific circumstances of receiving this letter.

Q Will you show us in this letter where it is stated that 3 million shares of the stock of Dennison Personnel had been sold?

A Sir, I would like to refer this to our counsel who reviewed it. I am not an attorney. I, of course, gave this to our legal department, who made such a determination.

Q Sir, do you have any recollection of when this letter was received by the bank?

A No, sir.

Q Isn't it possible, sir, inasmuch as this letter is not date stamped, that this letter, addressed to Carlton-Cambridge and Stevens, Jackson, Seggos, the underwriters, and Paragraph 1 of the letter states that:

"The following constitutes our opinion pursuant to Section 6.06 of the underwriting agreement between

MR. JAFFE: I object. There is an agreement which is in evidence which states that they would not be responsible for the enforcement of any collection.

THE COURT: But enforcement of is different from collection of. I think he may ask that question.

THE WITNESS: Could you repeat the question again.

Q I will withdraw it.

The June 12th check was handled as a collection item as opposed to going through the clearing house, is that correct?

A Yes.

Q I believe you testified that this was done to save time?

A Yes.

Q Had original subscriber's checks been deposited in the escrow account could they not also have been handled through the collection process as opposed to the clearing house?

A It would have been a monstrous affair.

MR. HEGHBAMH: No further questions.

THE COURT: If there is nothing further of this witness, you may step down.

(Witness excused)

THE COURT: What was it that was decided with

THE COURT: I assume he is getting to it.

Q When approximately did this happen? That is, that you received this information.

A Around the beginning of April of that year, I would say.

Q Who told you this?

A Mr. Seggos told me.

Q Do you remember the conversation with Mr. Seggos, what he said and what you said?

A I can't say as I recall, no.

Q Did he ask you to attempt to sell some of this stock?

A Yes.

MR. DERFNER: Objection, your Honor. This is hearsay.

Withdrawn, your Honor.

MR. JAFFE: I am sorry, your Honor, could I hear that question and answer again?

THE COURT: Yes.

(Testimony read.)

Q Did you sell any?

A No, I never sold any of the stock myself.

Q To your knowledge, did anybody in the office of Stevens, Jackson, Seggos sell any Dennison Personnel stock?

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A Yes.

Q Who was that?

A Jule Ziffer.

Q Did anybody in addition to Mr Ziffer at Stevens, Jackson sell any stock in the offering?

A No.

T2 Q Now, did there come a time when you learned that an after market would open up in Dennison Personnel?

MR. DERFNER: May I have the question read?

(Question read.)

MR. DERFNER: I object to that question. It calls for a conclusion. If Mr. Beirne would be able to be more specific about his questions, there would be no objection.

THE COURT: Sustained.

Q Did you ever discuss an after market in Dennison Personnel with anybody in the period May and June of 1972?

A I think that is kind of difficult to give a yes or no answer to, because it seems to be kind of vague.

Q I will withdraw that.

Did you ever see a quote for Dennison Personnel in the pink sheets of the National Quotation Bureau?

A Yes.

Q When approximately did you see that quote? Do you remember?

A Around the beginning of June.

Q Of 1972?

A 1972.

Q Prior to seeing that Dennison Personnel quoted in the pink sheets, had you discussed the possibility of an after market opening up with anyone?

MR. DERFNER: Objection, your Honor. It's a leading question.

THE COURT: I will allow it.

A To the best of my recollection, yes.

Q Whom did you discuss it with?

A I recall at a time prior to the stock, the name of the stock appearing in the pink sheets, discussing the after market with Mr. Coven.

Q How was that discussion held? Was it in person or by telephone?

A By telephone.

Q Did you call Mr. Coven or did he call you?

A I recall him calling the firm.

Q And you answered the phone? Is that correct?

A Yes.

Q Would you tell the court the substance of your conversation with Mr. Coven? What he said and what you said.

A He called to inquire as to how the sale of Dennison was coming along.

Q What did you tell him?

A I told him it was not doing that well, but it was selling, and to the best of my recollection I recall him saying that to assist in the sale of the security

because it was close to closing, that it was going to appear in the pink sheets.

Q Do you remember whether he said how it would come to appear in the pink sheets?

A He said the brokerage firm of M.S. Wien & Company would be making a market in the stock.

Q Can you fix this conversation in time? You testified that you saw Dennison in the pink sheets in early June. Does that help you fix when this conversation with Mr. Cowen occurred?

b2 A It was just prior to appearing in the pink sheets.

Q So it would be the last couple of days of May or the first few days of June? Is that correct?

A Yes.

MR. DERFNER: Objection. Counsel is now characterizing the witness' testimony. That is objectionable, especially in light of the fact of the assumption as to why it appears in the pink sheets, and we have agreed it appeared first on June 5, 1972.

THE COURT: The witness told us what he was told.

MR. DERFNER: The witness took counsel's suggestions.

THE COURT: You may inquire along those lines. Overruled.

Q Do you remember anything further about this conversation with Mr. Coven as to what was said?

MR. DERFNER: Objection as to the form of the question, your Honor.

THE COURT: Overruled.

A We discussed whether Stevens Jackson & Seggos would be trading the stock in the after market, and at that time I couldn't answer that question because the firm had voluntarily halted trading because of some internal book-keeping problem, and by the time the problems had been resolved we had not decided whether we were going to continue doing business or not.

Q Do you remember whether Mr. Coven said anything as to why Stevens Jackson might want to make a market?

MR. DERFNER: I object.

Q You testified whether Stevens Jackson would make a market? Is that correct?

A Yes.

Q Did Mr. Coven indicate any reason why Stevens Jackson might want to make a market?

MR. DERFNER: I object.

THE COURT: Sustained.

Q Do you remember anything further about that conversation?

A No.

Q Just one further question, Mr. Lian: you mentioned there were certain problems at Stevens Jackson at that time and that they were subsequently cleared up? Is that correct?

A Yes.

Q What was the nature of those problems?

A Bookkeeping problems. Bookkeeping was not up to date and the firm couldn't conform with the NASD rule and was not able to produce a balance sheet, a trial balance, because the books were not up to date.

Q I think you also indicated that subsequently you thought that problem was solved? Is that correct?

A Yes.

Q Do you know how it was solved?

MR. DERFNER: Objection, your Honor.

MR. BEIRNE: I believe the witness can expand upon his statement, if he knows.

THE COURT: If he knows, I will allow it.

Q The firm voluntarily halted trading, the making of any transactions, until the books were brought up to date, and the balance sheet, trial balance, could be produced.

A trial balance was produced and handed over to the NASD, and they agreed at that time that they were satisfied with

the figures and that we could clear up our fails and decide whether we wanted to continue doing business or not.

Q Do you remember when that trial balance was turned over to the NASD?

A The end of May; it was in the end of May, 1972.

MR. BEIRNE: No further questions.

THE COURT: Mr. Jaffe.

CROSS EXAMINATION

BY MR. JAFFE:

Q You indicated that you were employed by Stevens Jackson Seggos until the end of June? Is that correct?

A Yes, sir.

Q About what date in June was that?

A About June 30th.

Q During that time did the firm have any management changes?

A The firm was under the management of Mr. Seggos, and when he left on a trip, the management of the firm was informally put in my hand.

Q That did not change until June 30,1972, did it?

A I don't understand what you mean.

Q Was Mr. Seggos still the president as of June 30, 1972?

A Yes.

Q In the course of your conversations with Mr. Coven regarding Dennison, I believe you testified that Mr. Coven had made several inquiries regarding the progress of the selling of Dennison by Stevens, Jackson, Seggos, is that correct?

A Yes.

Q Mr. Lian, I believe you stated that you first heard of Dennison Personnel about the beginning of April 1972, is that correct?

A Yes.

Q And you heard of it through Mr. Seggos?

A Yes.

Q At that time was it your understanding that you as a trader for Seggos would be making a market in Dennison when the distribution was completed?

A Yes.

Q At that time you didn't have your internal book-keeping problems with the NASD, did you?

A No.

MR. JAFFE: If we can just fix "at that time" a little more precisely.

MR. DERFNER: I believe we are speaking of the beginning of April 1972, your Honor.

THE COURT: What do you mean by it was your

understanding? Did somebody say that to you?

THE WITNESS: I believe that in the conversation probably with Mr. Seggos when we originally discussed the underwriting of Dennison that once the offering was completed and closed that the firm would probably make a market in the stock.

THE COURT: All right.

Q Mr. Lian, also during the period of the middle of May 1972 until the beginning or Middle of June 1972 did you have occasion to speak to Mr. Ziffer on several different occasions regarding the distribution and sale of Dennison?

A Yes.

Q I believe, sir, that you testified that just prior to Dennison appearing in the Pink Sheets for the first time you were informed that it would so appear, is that correct?

A Yes.

Q If I told you that Dennison Personnel first appeared in the Pink Sheets on June 5, 19&2 would that refresh your recollection as to approximately when you were told or when you first learned that it would so appear? June 5 being a Monday, sir.

MR. BEIRNE: I object to that question, your Hono

is too vague.

MR. DERFNER: I will rephrase the question.

Q Mr. Lian, as you sit here and testify today and you search your mind, your memory back to June of 1972, do you specifically recall speaking to Mr. Coven regarding Dennison Personnel appearing in the Pink Sheets or are you reconstructing your recollection and testifying as to such a reconstructed recollection?

MR. BEIRNE: Again, y our Honor, I don't see the need to answer a question so vague as that.

THE COURT: I will allow it and see what he says. Go ahead.

A Let me say that I remember the fact that I knew there was going to be trading. I don't remember the specific words that were said to me on how I was told it was going to be trading but since at that time the only person that I had been speaking to about the issue outside of the firm was Mr. Coven, I guess I am making some assumption that it did come from him.

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Q Mr. Lian, you were speaking to Mr. Ziffer about Dennison Personnel during late May and early June, 1372, were you not?

A Yes.

Q Isn't it possible that Mr. Ziffer may have mentioned to you that Dennison will appear in the pink sheets?

MR. BEIRNE: Your Honor, anything is possible. I object to that question.

MR. DERFNER: He testified --

THE COURT: I recall his testimony. Just a moment. Sustained.

Q Is it fair to state at this point, sir, that you are not absolutely certain that it was Mr. Coven who did inform you that Dennison would appear in the pink sheets?

A I couldn't say I was absolutely certain.

Q So that it could have been someone else, couldn't it?

MR. BEIRNE: Same objection, your Honor.

THE COURT: I will allow it.

A It's possible, but I can't think of anyone else that could have told me.

Q Could Mr. Ziffer have told you in light of the

fact that you and Mr. Ziffer had been speaking about Dennison Personnel at this time?

A It's possible that he could have told me, but it's also true the only way he could have found out would be from the same source.

MR. DERFNER: I ask that the latter part of that answer be stricken as nonresponsive.

THE COURT. You will have to face both of those possibilities.

MR. DERFNER: Thank you, your Honor.

Q Mr. Lian, do you recall approximately when Mr. Seggos returned to New York in the summer of 1972?

A Around June 10th.

Q Now, Mr. Lian, referring back to the latter part of May, early part of June, 1972, who on behalf of Stevens Jackson Seggos was responsible for clearing up the bookkeeping problems that the NASD had raised?

A I was.

Q Were you doing that full time?

A Yes.

Q Were you doing that eight hours a day or more?

A More.

Q Approximately how many hours a day were you involved in this problem?

to June 10, 1972? 319a

A Yes.

Q During that time period did you have any direct responsibilities in the sale of Dennison Personnel securities?

A You mean was I directly responsible?

Q Were you directly responsible or was that delegated to Mr. Jules Ziffer?

A Mr. Ziffer was more involved with the issue than I was. I would say he was more responsible for keeping a record of what was going on in Dennison than I was.

Q By that time isn't it a fact that you were involved in getting up a trial balance for the NASD?

A Yes.

Q Did you devote any of your time to the sale of Dennison securities?

A No.

MR. DERFNER: Thank you, your Honor. I have no further questions.

THE COURT: Mr. Brown?

MR. BROWN: I have no questions, your Honor.

MR. BERGER: I have no questions.

REDIRECT EXAMINATION

BY MR. BEIRNE:

Q Mr. Lian, what is your best recollection as to who told you M.S. Wien was going to make a market in Dennison st[illegible] 320a

MR. DERFNER: Objection. It has been asked and answered.

THE COURT: No. I will allow it.

A To the best of my recollection it was Mr. Coven who told me that the stock was going to be traded.

Q And that M.S. Wien was going to make a market?

A And that M.S. Wien was going to make a market.

MR. BEIRNE: No further questions.

RECROSS EXAMINATION

BY MR. DERFNER:

Q Mr. Lian, do you recall talking to me at my office yesterday regarding your testimony here?

A Yes.

Q Do you recall telling me you were not certain it was Mr. Coven --

MR. BEIRNE: Objection.

MR. DERFNER: May I finish the question, your Honor?

THE COURT: Just a moment. You are putting yourself in a position counselor of making some choices. Do you want to reconsider the question?

his best recollection of what occurred?

MR. DERFNER: I withdraw my previous question, your Honor.

Q Mr. Lian, is it your testimony today that you were informed at some time that Dennison would appear in the pink sheets and that M.S. Wien would be the house who put in the bid? Do you recollect that being the same conversation, or is it possible that you got those two bits of information at separate times?

A I would recall it to have been the same conversation.

Q Notwithstanding your answer to Mr. Beirne's question about your best recollection, it is nevertheless still possible that it was not Mr. Coven who did inform you that Dennison would be in the pink sheets? Is that correct?

MR. BEIRNE: Objection.

THE COURT: I will allow it.

A I think I said before it was possible.

MR. DERFNER: Thank you. I have no further questions.

MR. JAFFE: No questions.

THE COURT: Nothing further? Step down.

(Witness excused)

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Q Mr. Caplin, where do you reside?

A In Wilton, Connecticut, at 11 Freshwater Lane.

Q Have you ever heard of a stock called Dennison Personnel?

A Yes, I have.

Q Do you recall when you first heard of Dennison Personnel?

A It was approximately the early part of April in 1972.

Q Do you recall how you heard about this stock?

A Yes, I do.

Q Tell the court.

A The stock was brought to my attention by a registered rep in the employ of my firm, Gotham Securities Corporation. Do you want his name?

Q Please.

A Philip Shapiro was his name.

Q At that time, Mr. Caplin, in April, 1972, what was your occupation?

A I was the president of Gotham Securities Corporation, a stock brokerage firm.

Q Do you recall when Mr. Shapiro brought this stock to your attention?

MR. DERFNER: I object to the form.

THE COURT: Sustained in its present form.

Q Can you describe the conversation to the court to the best of your recollection in which Mr. Shapiro first mentioned this stock to you?

MR. DERFNER: I object. This is hearsay testimony. Mr. Shapiro isn't a witness. He is not a party.

MR. HECHMANN: It is merely setting the background for the actions of Mr. Caplin with regard to the stock, as to why he took certain action.

THE COURT: I will take it on that limited basis.

A Mr. Shapiro was interested in purchasing for his clients shares of stock in the Dennison Personnel underwriting and he asked me whether it would be possible for Gotham Securities to become a part of the selling group in the syndicate in the public offering, and I said I would do my best to try and get participation in the offering.

Q Mr. Caplin, what did you do in connection with this attempt to gain participation?

A I contacted Stephens Jackson Seggos and requested that we he included as part of the selling group.

Q Do you recall whom you contacted at Stephens Jackson?

A My initial conversation was with Terry Seggos.

MR. DAVIS: Can you fix the time?

Q Approximately when did this conversation take place?

A To the best of my recollection it was the early part or the middle of April. It was prior to the effective date of the underwriting.

MR. DERFNER: Can we get a stipulation on the record that Terry Seggos is the Eleftherios Seggos, who was a witness here, and who was president of Stevens Jackson at the relevant time?

THE COURT: Is that correct?

MR. HEGHMANN: Yes.

THE COURT: And is that the Mr. Seggos who testified here?

MR. HEGHMANN: Yes, it is, your Honor.

Q Mr. Caplin, did there come a time when Gotham Securities began to sell Dennison Personnel in the original offering?

A Yes. We were informed that we would have an allocation of up to one half a million shares of the stock to be sold to our customers, and shortly after the effective date of the issue we commenced our distribution of the shares.

Q Assuming that the effective date was April 26,

1972, approximately how long after that did you begin to sell the stock?

A I would say shortly thereafter we received copies of the final prospectus and mailed them to the clients that we intended to solicit orders from, and shortly thereafter actually confirmed out purchases.

Q Mr. Caplin, did there come a time when you were informed there would be a closing on the Dennison issue?

MR. DERFNERN: I object, your Honor, unless the question is clarified as to time and by whom the information was received.

THE COURT: Well, I think he can part with this question.

Go ahead.

A Yes, the latter part of May, very late May, Mr. Ziffer from Stevens Jackson informed us that there was to be an initial closing on the offering to take place, I believe he had said, the last week in May, and we were to get ready for that closing.

MR. DERFNER: Also, one last thing: could you determine if, in fact, this conversation was had with the witness? Or if he speaking of hearsay conversation?

THE COURT: His testimony so far is he was informed. Did you say "we were informed"?

THE WITNESS: I believe I said "we."

THE COURT: Why don't you clarify it?

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Q How did this information come to you, Mr. Caplin?

A Directly from Mr. Ziffer, both to myself and to my brother, who was handling the orders for Gotham Securities as our vice president of operations.

Q I believe you fix the time period as the end of May? Is that correct?

A That is correct.

Q Did you take any action in connection with this proposed closing?

A Yes, we did. We issued a check for the amount of shares that had been purchased by our clients up to that date and submitted a confirmation to Stevens Jackson specifying that we had purchased so many shares of Dennison Personnel.

Q At that time, Mr. Caplin, did you discontinue the sale of the original issue?

A No, we did not.

Q Why not?

A Because Mr. Ziffer informed us that this was not to be a final closing, but we were to continue to sell the issue until such time as -- well, just we were to continue to sell the issue.

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Q Again, how did this information come to you or to

previously, your Honor, that there is a difference between a trading market and a when issued market.

THE COURT: Well, Mr. Heghmann if he wishes to proceed can develop the inquiry in the terms in which he posed the question if he first qualifies Mr. Caplin, and then if you wish to go behind that, you can on cross examination.

MR. DERFNER: Thank you, your Honor.

Q Do you recall the question, Mr. Caplin?

A Yes, I do. To the best of my recollection, I recall it was brought to my attention that a brokerage firm, I believe it was M.S. Wien & Company, had submitted the name of Dennison Personnel in the National Quotation Bureau's pink sheets some time in the early part of June. I don't recollect the date. And to me that was an indication that the new issue was being ready to be treated.

Q Prior to the time that it was brought to your attention that there was a bid submitted in the pink sheets, had you been informed that there had been any type of final closing for the Dennison issue?

A No, I had not been specifically informed as to whether or not there had been a final closing.

Q To the best of your recollection, prior to the time it came to your attention that a quote was placed in

the pink sheets --

MR. DAVIS: Just an objection on this point to Mr. Heghmann's use of the word "bid." The witness testified they put aname in, and not a bid or a quote. I think the distinction is relatively important.

Q When it first came to your attention that something was placed in the pink sheets, did you check the sheets?

A I did, yes.

Q What was in the sheets at the time you checked it?

A I don't recall whether the first time I saw it there was a bid and asked quote, but I remember distinctly that one bid appear very soon. I don't know if it was the first day or the second day that Wien had Dennison in the sheets, but there was a bid and an asked price quoted very soon thereafter.

Q Prior to the time when you first looked in the sheets and saw M.S. Wien's entry, had anyone told you to stop selling the issue?

A No.

Q When you saw the M.S. Wien entry in the pink sheets, did you undertake any action to determine whether or not the issue had closed?

A Yes, we did. Either my brother or myself tried to cortact Julie Ziffer from Stevens Jackson, and to the

best of my recollection we did not reach him to get an answer as to why M.S. Wien was trading the stock.

So a call was initiated to Bernie Coven as counsel for the issuer on this to ask him about it.

Q Do you recall who placed this call?

A I'm a little vague on this, because I can't remember if my brother called him directly or if I called him directly. However, I believe it was me that called him and spoke to him directly.

Q Now, again, can you place an approximate time on this phone call?

A I would say it was the first week in June, somewhere the first seven or eight days of June.

Q Do you recall the substance of this conversation with Mr. Coven? What you said and what his reply was?

A Basically, I inquired as to why M.S. Wien was in the sheets on the stock, and he informed me that if they were in the sheets it was probable that they were trading on a when issued basis, but they had no stock to actually trade with, no stock had been issued.

Q Do you recall if anything else was said during that conversation?

A I believe I asked him if we could continue in our distribution of the allocation of shares, and he said

yes, continue selling.

Q Do you recall anything else being said during that conversation?

A I think we have covered it.

Q You have indicated that you attempted to contact Mr. Ziffer prior to calling Mr. Coven. Subsequent to the conversation with Mr. Coven did you attempt to contact Mr. Ziffer?

A Oh, yes, we spoke with him and he came up to the office on one or more occasions, probably more.

Q Do you recall if you discussed the appearance in the sheets of M.S. Wien with Mr. Ziffer?

A I don't recall.

Q Do you recall if you discussed the continued sale of the new issue with Mr. Ziffer?

A Specifically, yes, and he said, "Just keep on selling it."

THE COURT: As a part of the selling group?

THE WITNESS: That is correct.

THE COURT: Was that the same that you and Mr. Coven had talked about, your continuing to sell as part of the selling group?

THE WITNESS: That is correct.

THE COURT: In other words, at ten cents a share?

THE WITNESS: That is correct.

Q Mr. Caplin, did there come a time when Gotham Securities stopped selling the new issue?

A Yes, approximately the 20th or the 21st of June.

Q Can you tell the court why Gotham stopped selling the new issue?

A I'm not positive as to what the exact reason was.

Q Let me withdraw the question and rephrase it.

Did there come a time when you learned that the new issue was no longer being sold?

A Yes, but that took place towards the very end of June. I am trying to think. One of the reasons why -- give me one moment -- I recall that Carlton-Cambridge did appear as a trading market maker in the sheets, but I am not certain whether this coincided with our terminating the selling effort or not. I would say we just stopped selling because we had no one else to sell it to.

Q Mr. Caplin, I will show you what has now been marked Plaintiff's Exhibit 26 for identification and ask you to examine it, please.

Mr. Caplin, do you recognize that document?

A Yes, I do.

Q Can you tell the court what it is?

A Yes, it's a letter from our firm signed by my

brother, Joel, who is vice president of the firm, to the American Stock Transfer Corporation the question that they issue shares in certain denominations to certain of our clients who had purchased the stock.

Q Do you recognize the signature at the bottom of the page?

A Yes.

Q Whose signature is that?

A My brother's.

Q Do you know where the original of this letter is located?

A The original is somewhere in my office. I attempted to find it and I couldn't put my hands on it, but this is a copy I made a long time ago.

MR. HEGHMANN: Your Honor, I would like to offer Plaintiff's Exhibit 26 in evidenve.

MR. DERFNER: May I have a voir dire, your Honor?

THE COURT: Yes.

VOIR DIRE EXAMINATION

BY MR. DERFNER:

Q Mr. Caplin, were you present when your brother Joel signed this letter?

A I don't recall.

Q Do you know if this letter was ever mailed to

the American Stock Transfer Company? Do you personally know?

A The circumstances were such that I ascertained that it was mailed, since it was returned to us by the American Stock Transfer, so I imagine they received it.

Q Were you present when it was mailed?

A No, I don't believe I was.

MR. DERFNER: Nothing further.

MR. HEGHMANN: I would like to offer it in evidence.

THE COURT: Any objection?

MR. DERFNER: No objection.

(Plaintiff's Exhibit 26 received in evidence.)

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DIRECT EXAMINATION (Continued)

BY MR. HEGHMANN:

Q Mr. Caplin, Plaintiff's Exhibit 26 in evidence is dated June 21, 1972. I will ask you now, as of that date, to the best of your recollection, was Gotham still selling the original issue?

A We probably terminated on that date or the date before but up to that date, yes, we were still selling it.

Q And you were still selling the original issue at 10 cents?

A That is correct, the original new issue.

MR. JAFFE: Your Honor, can I have that question and answer read.

(Testimony read.)

Q Mr. Caplin, prior to June 21 had anyone told you to stop selling the original issue?

A No.

MR. DERFNER: Objection, your Honor.

Withdrawn.

Q What was your answer?

A No, no one told us to stop selling.

MR. JAFFE: Your Honor, I would like to object to the question for the vagueness of "anyone" which is so broad.

THE COURT: Well, it is, but I don't see how else he can make that point. It's all embracing.

Q Mr. Caplin, I will no w hand you what has been marked Plaintiff's Exhibit 27 for identification and ask you to examine it.

Do you recognize that document, Mr. Caplin?

A Yes, I do.

Q Can you tell the Court what it is?

A It was a letter from American Stock Transfer Company to Gotham Securities, attention Joel Caplin, stating that they could not accept our letter of June 21 and our request in our letter of June 21 unless they received an authorization from an underwriter.

Q Did you receive this letter, Mr. Caplin?

A Yes, we did.

Q Is this an original letter, Mr. Caplin?

A No, it's not. It's a copy of the original.

Q Do you know where the original is located?

A I imagine it's with the original of your Exhibit 26 which I tried to find and couldn't. But it was in my possession until recently.

Q Do you know who made this copy?

A No, I really don't.

Q Do you recognize it as a true copy?

A That is correct.

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A Yes, I do.

MR. HEGHMANN: I would like to offer Plaintiff's Exhibit 27 in evidence, your Honor.

MR. JAFFE: No objection.

MR. DAVIS: No objection.

THE COURT: Received.

(Plaintiff's Exhibit 27 was received in evidence.)

xx Q Mr. Caplin, going back to Mr. Coven's conversation, I believe you used the term when, as and if issued market.

Can you tell the Court what this means?

MR. DERFNER: Objection, your Honor.

Can we identify which Mr. Coven's conversation Mr. Heghmann is interrogating about?

Q Now, Mr. Caplin, I am referring to the telephone conversation which occurred subsequent to your learning that M. S. Wien had submitted a name in the Pink Sheets.

A During the ifrst week of June. Well, the when, as and if issued market refers to a situation in which a distribution of a new issue has not yet had a final closing and the stock is traded On an if basis, on a when, as and if basis, meaning trades made are only finalized after there has been a closing and the stock has been distributed.

They can be resinced if the issue never closes.

Q Mr. Caplin, subsequent to the teleph one conversation with Mr. Coven in the first week of June 1972, during the period from that conversation to the time of the June 21 letter to American Stock Transfer, do you recall any other conversations with Mr. Coven?

A No, I don't believe there were any.

Q During this period did you have any conversations with Mr. Rega?

A No.

Q Subsequent to the June 21 letter do you recall any conversations with Mr. Coven?

A Following June 21?

Q Yes.

A Yes, I contacted him at the very end of June after we received the letter from American Stock Transfer.

Q To the best of your recollection, can you recall or can you tell the Court the substance of this conversation between you and Mr. Coven?

A Yes, it was to inform him that we had a dispute with Stevens, Jackson over these 3500 shares of stock which we thought we had bought for our clients but which they said we couldn't have an I asked Mr. Coven to assist us in resolving the matter.

Q Do you recall what Mr. Coven said to you?

A Not specifically, but basically he told us that the issue -- that we couldn't have gotten these shares for our clients because the issue had closed. And that he would do everything he could to straighten it out and would look into the matter.

Q Subsequent to this conversation did you have any further conversations with Mr. Coven relative to the sale of the Dennison original issue?

A I believe we did, yes.

Q Do you recall any of those conversations?

A It was, again, to try and resolve this problem that I had where I thought my clients had bought the stock and they had not.

We ultimately canceled the orders.

MR. DERFNER: Can I have that last question read back?

THE COURT: Yes.

(Question read.)

Q Mr. Caplin, again referring to Plaintiff's Exhibit 26 in evidence, the letter refers to orders placed on behalf of two persons.

Do you recall approximately when these persons had ordered the stock?

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A Yes. I recall that these people specifically had purchased the stock just prior to this letter having gone out.

I would say some time between the 16th and the 20th of June.

Q Did Mr. Coven ever indicate to you when the closing had occurred?

A I don't believe at this time I asked or was told when it closed.

Q In connection with the orders submitted by Mr. Reichman and Mr. Youngwirth, do you recall if you received any indication that the closing had occurred prior to the time of these orders?

A No, I definitely did not receive any word that there had been a final closing.

Q In your subsequent conversations with Mr. Coven concerning these orders was there any indication that the closing had occurred prior to the receipt of these orders?

A Yes, there would have been because that is why we canceled them. We were told that they had closed and we didn't get the orders in on time and, therefore, couldn't get the stock for these people. But I don't recall if a date had ever been pinpointed.

Q Who told you this, when you said you were told?

A I would say Mr. Coven and probably Mr. Ziffer because we had discussed it with him and he said we just couldn't have stock because the deal was closed out.

Q In June of 1972 were you told how many shares of Dennison had actually been sold?

A No.

Q Mr. Caplin, I believe you indicated earlier that you were given some type of allocation, is that correct?

A That is correct.

Q Did you sell all of the stock allocated?

A No, we did not.

Q Do you recall approximately what percentage of he allocation you did sell?

A Let's see, we were allocated 500,000 shares and I believe we sold somewhere around 300 or 320,000 shares so it would be around 60, 65 per cent.

Q Mr. Caplin, do you know if Dickenson, Rothbart --

MR. JAFFE: Your Honor, may I have the reading back of the answer to that question?

THE COURT: All right.

(Answer read.)

Q Mr. Caplin, were you ever asked to make a market in Dennison Personnel?

A No.

MR. HEGHMANN: Your Honor, at this time I have no further questions.

THE COURT: Mr. Jaffe.

MR. JAFFE: Your Honor, we are going to have a recess this afternoon, so may we have a recess now?

THE COURT: We will take 10 or 12 minutes.

(Recess.)

THE COURT: All right, go ahead.

CROSS EXAMINATION

XX BY MR. DERFNER:

Q Mr. Caplin, in early April 1972 did you have a conversation with Mr. Ziffer of Stevens, Jackson, Seggos regarding the participation of Gotham Securities in the distribution of Dennison?

A Yes, I did.

Q Did Mr. Ziffer indicate that he would be happy to have your firm participate in the selling groups?

A Yes, he did.

Q I believe you testified that you had an allocation of half a million shares, is that correct?

A That is correct.

Q Was that a maximum allocation or were you permitted, under your agreement with Stevens, Jackson,

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United States Court of Appeals
For the Second Circuit

Docket No. 75-6080

SECURITIES AND EXCHANGE COMMISSION,
Plaintiff-Appellee,
against
BERNARD JAY COVEN,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK
CITY OF NEW YORK } ss.:
COUNTY OF NEW YORK

Charles Alston, being duly sworn, deposes and says, that he is over 18 years of age. That on the 21 St. day of November, 1977, he served 1 Copy (3 Vol.) of the attached Joint Appendix on the attorney for the Plaintiff-Appellee herein by depositing the same, properly enclosed in a securely sealed post-paid wrapper, in a U. S. Post Office at 90 Church Street, New York City, directed to said attorney at Securities and Exchange Commission, office of general counsel, Glen L. May, Esq. Associate Counsel, 500 North Capital Street, Washington, D.C. 20549

this being the place where THEY maintain ~~his~~ offices for the regular transaction of business, and the last address mentioned in the papers last served by them.

Charles Alston

Sworn to before me this

21 St. day of November , 1977 .

Monroe D. Rosen

MONROE D. ROSEN
Notary Public, State of New York
No. 24-4616690
Qualified in Kings County
Commission Expires March 30, 1979